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THE EDUCATION ACTS,

1870—1919,

AND OTHER ACTS RELATING TO EDUCATION.

WITH NOTES ON THE STATUTORY PROVISIONS.

AND AN APPENDIX,

CONTAINING THE SCHOOL SITES ACTS, ORDERS IN COUNCIL AND RULES, REGULATIONS AND MEMORANDA OF THE BOARD OF EDUCATION, THE HOME OFFICE, THE LOCAL GOVERNMENT BOARD, ETC.

FIRST TWENTY EDITIONS

BY

SIR HUGH OWEN, G.C.B.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW;

TWENTY-FIRST EDITION

BY

SIR JOHN LITHIBY, C.B., LL.B. (London)

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,

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LONDON:

CHAS. KNIGHT & CO., LTD.

227 TO 239 TOOLEY STREET, S.E.

1920.

Re cat
21/6/85

PREFACE.

SINCE the last edition of this book was issued extensive changes have been made in the objects which the Education laws are designed to secure. The aim of the legislature is no longer limited to the provision of a merely elementary system of education with a small amount of higher education for a comparatively few children whose circumstances enable them to take advantage of it. The object now is to secure the progressive development and comprehensive organisation of a national system of public education throughout the country.

Incidentally, the legislature has determined to provide for the social and physical training of children and young persons of school age and beyond it, and to arrange for their medical inspection, and to a certain extent, for their medical treatment, with a view to keep them in good health during and after their period of education.

Much of the older legislation has been repealed, and when the Board of Education are in a position to exercise their powers of bringing the Education Act, 1918, into full operation, still more of it will cease to have effect. These changes have made it necessary to issue a new edition of the late Sir Hugh Owen's well-known work.

The present volume sets out the statutes as they will operate when the Act of 1918 is in full operation. The moribund enactments have been omitted, as well as those which are already repealed. The principal orders and regulations of the Board of Education, the Home Office and the Local Government Board dealing with the subject are included, as well as a selection of departmental memoranda and circulars. The decisions of the Courts of Law have been fully noted.

The great increase in the cost of printing has made it necessary to alter somewhat the style of the book, to use smaller type than in previous editions and to omit some of the Circulars which in other circumstances might have been printed in the Appendix. The effect of this has been to reduce the size of the volume, but the editor hopes that this will not diminish its administrative value and that Local Education Authorities will find the 21st edition as useful as any of its predecessors.

The editor has received much assistance, willingly and kindly rendered, from officers of the Board of Education, all of which he gratefully acknowledges. It is perhaps unnecessary to do so; but he would add that, except where otherwise stated, he alone is responsible for the statements and opinions set out in the notes which the book contains.

1st March, 1920. J. L.

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THE ELEMENTARY EDUCATION ACT, 1870.

(33 & 34 Vict., c. 75.)

An Act to provide for Public Elementary Education in England and Wales.

[*9th August*, 1870.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: (that is to say)—

The following sections of this Act are the provisions which are now in force.

In connection with these sections it is to be borne in mind—

(1) *That references in this Act to school boards and school districts are to be construed as references to Local Education Authorities and the areas for which they act* (*Education Act*, 1902, *Sch. III.* (1)) *;*

(2) *That the Local Education Authorities throughout their area have the powers and duties of a school board and school attendance committee, and school boards and school attendance committees are abolished* (*Education Act*, 1902, *sec.* 5) *;*

(3) *That a Local Education Authority may delegate to the education committee with or without any restrictions or conditions as they think fit any of their powers except the power of raising a rate or borrowing money* (*Education Act*, 1902, *sec.* 17)*; and*

(4) *That the Acts which are cited as the Education Acts*, 1870 *to* 1918, *are to be read as one* (*Education Act*, 1918, *sec.* 52, *p.* 436).

Preliminary.

Short Title.

1. This Act may be cited as the "Elementary Education Act, 1870."

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Definition of Terms.

3. In this Act—

The term "borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter

seventy-six, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," and the Acts amending the same : (1)

The term "parish" means a place for which for the time being a separate poor rate is or can be made : (2)

The term "person" includes a body corporate :

The term "Education Department" means "the Lords of the Committee of the Privy Council on Education" : (3)

The term "Her Majesty's Inspectors" means the inspectors of schools appointed by Her Majesty on the recommendation of the Education Department :

The term "managers" includes all persons who have the management of any elementary school, whether the legal interest in the schoolhouse is or is not vested in them : (4)

The term "teacher" includes assistant teacher, pupil teacher, sewing mistress, and every person who forms part of the educational staff of a school :

The term "parent" includes guardian and every person who is liable to maintain or has the actual custody of any child : (5)

The term "elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week : (6)

The term "schoolhouse" includes the teacher's dwelling-house and the playground (if any) and the offices and all premises belonging to or required for a school :

The term "vestry" means the ratepayers of a parish meeting in vestry according to law :

The term "ratepayer" includes every person who, under the provisions of the Poor Rate Assessment and Collection Act, 1869, is deemed to be duly rated : (7)

The term "Parliamentary Grant" means a grant made in aid of an elementary school, either annually or otherwise, out of moneys provided by Parliament for the civil service, intituled "For Public Education in Great Britain."

Note 3.—(1) The word "borough," as defined, includes not only the several boroughs specified in Schedules A and B of the Municipal Corporations Act of 1835, but all municipal boroughs which have been incorporated since the passing of that Act. The Municipal Corporations Act, 1882, which repealed the Act of 1835, is now substituted for that Act. As to the Borough of Wenlock, see 37 & 38 Vict., c. 39, *p.* 82.

(2) This interpretation (which was repealed by the Statute Law Revision (No. 2) Act, 1893) had the effect of rendering every parish, township, parochial chapelry, hamlet, vill, precinct, or other place for which a separate poor rate was or could be made, a "parish" for the

purposes of the Act. Divisions of a parish for ecclesiastical purposes only were not recognised by the Act.

(3) The Board of Education established under the Board of Education Act, 1899, takes the place of the Education Department, and sec. 2 of that Act provides that all enactments and documents shall be construed accordingly. This definition of "Education Department" was repealed by the Statute Law Revision (No. 2) Act, 1893.

(4) As to the managers of public elementary schools provided by a Local Education Authority and managers of public elementary schools not provided by a Local Education Authority, see sec. 6 (1), (2), and sec. 11 of the Education Act, 1902.

By sec. 11 (6) of the last-mentioned Act it is provided that the body of managers appointed under that Act for a public elementary school not provided by the Local Education Authority shall be the managers of that school for the purposes of that Act and the Elementary Education Acts.

Any school which has been provided by a School Board, or is deemed to have been so provided, is to be treated for the purposes of the Elementary Education Acts as a school which has been provided by the Local Education Authority, or which is deemed to have been so provided, as the case may be. See the Education Act, 1902, Sch. II. (13), and notes thereon.

(5) This definition includes the father and grandfather, and the mother and grandmother, of a child, as by the 43 Eliz., c. 2, sec. 7, they are liable to maintain the child if of sufficient ability. As to the case of a married woman having a child residing with her, during the absence of the husband from home, either by desertion or in pursuit of his lawful calling as a sailor or otherwise, see *Hance* v. *Burnett*, p. 49, *post.* See also *School Board for London* v. *Jackson*, p. 91, *post.* It would appear that the board of guardians of a poor law union, having children of school age under their care, the superintendent of cottage homes belonging to such guardians, and the foster mothers in charge of the cottages, may, as to some or others of them, be "parents" within this definition (*Gateshead Union v. Durham County Council* (1918), 1 Ch. 146). See also *Southwark Union* v. *London County Council*, cited on p. 453.

(6) It is enacted in sec. 2 (2) of the Education Act, 1918, that so much of this definition of "elementary school" as requires that elementary education shall be the principal part of the education there given, shall not apply to such courses of advanced instruction as are specfied in sec. 2 (1) of the Act of 1918, see page 348.

The expression "elementary school" does not include any school carried on as an evening school under the Regulations of the Board of Education (Education Act, 1902, sec. 22 (1), p. 203.

To render an "elementary school" a "public elementary school" within the meaning of the Act, it must be conducted in accordance with the regulations prescribed by sec. 7, and the other conditions referred to in the notes on that section must be fulfilled.

Wherever the word "school" occurs in the Code it is to be held to include "department of a school," and for the purposes of the Code the Board have power to decide whether part of a school is or is not a department.

(7) The Poor Rate Assessment and Collection Act, 1869, by sec. 19, enacts that the overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate book the name of the occupier

of every rateable hereditament, and such occupier *shall be deemed to be duly rated.* In *Cross* v. *Alsop* (Law Rep., 6 C. P, 315; 40 L. J. C. P. 53; 23 L. T., N. S., 589), it was held in the Court of Common Pleas that the section quoted only applied to the occupiers of rateable hereditaments, in respect of which the owners had entered into agreements with the overseers to pay the rates instead of the occupiers, under sec. 3 of the Poor Rate Assessment and Collection Act, or in respect of which the owners were rated under an order of the vestry, under sec. 4 of that Act. In a later case (*Smith* v. *Overseers of Seghill*, Law Rep., 10 Q. B. 422; 44 L. J. M. C. 114; 32 L. T., N. S., 859), the Court of Queen's Bench held that the section applied to every case whether the rate was collected from the owner or occupier, and whether the owner or occupier was liable for the rate. Any doubt arising from these conflicting decisions was removed by sec. 14 of the Parliamentary and Municipal Registration Act, 1878, which provides that the enactment referred to "shall not be deemed to apply exclusively to cases where an agreement has been made under sec. 3 of the Act, or where an order has been made under sec. 4 of the Act, but shall be of general application."

With regard to the entry in the rate book of the names of persons who become occupiers of tenements which were unoccupied at the time of the making of the rate, or who succeed other occupiers before the rate is wholly discharged, sec. 16 of the Poor Rate Assessment and Collection Act, 1869, enacts as follows: "If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditament being unoccupied at the time of the making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, as far as the same shall be known to them; and such occupier shall thenceforth *be deemed to have been actually rated* from the date so entered by the overseers."

Supply of Schools.

School District to have sufficient Public Schools.

5. There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined), available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made; and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in manner provided by this Act.

Note 5.—This section is repealed by the Education Act, 1902, p. 229. except so far as it defines public school accommodation.

With regard to the provision by the Local Education Authority of additional school accommodation, see secs. 18 and 19.

Sch. III. (5), of the Education Act, 1902, provided that the duty of a Local Education Authority under the Education Acts to provide a sufficient amount of public school accommodation should include the duty to provide a sufficient amount of public school accommodation without payment of fees in every part of their area, but that enactment has been repealed by the Act of 1918, see p. 442. Sec. 26 of the

Education Act, 1918, provided that, with the exceptions there mentioned, no fees shall be charged or other charges of any kind made in any public elementary school, p. 386.

In *Gateshead Guardians* v. *Durham County Council* (1918) 1 Ch. 146; 117 L. T., 790; 16 L. G. R., 33, the Court of Appeal held that a board of guardians have the right to send poor law children living in cottage homes in the district of a Local Education Authority to any public elementary school in that district in which there is room for them, unless there is some reasonable ground for excluding them, not inconsistent with the right of the parents (in whose position the guardians stand) to the free education of the same children.

As to the provision of new schools or the enlargement of schools, see secs. 8 and 9 of the Education Act, 1902, pp. 157-8; and with respect to the powers of the Board of Education in the case of the failure of a Local Education Authority to provide such additional public school accommodation as is in the opinion of the Board of Education necessary, see sec. 16 of that Act; the Education (Local Authority) Default Act, 1904, p. 255; and sec. 44 (5) of the Education Act, 1918, p. 414.

As to the term "public elementary school," see sec. 7. "School district" is to be construed in this Act as referring to the area for which a Local Education Authority acts. (Education Act, 1902, Sch. III. (1)).

Schools, although not public elementary schools, may be certified by the Board of Education as efficient schools (see the Education Act, 1876, sec. 48, p. 100).

With respect to the *proportion of the population* of a parish *for which school accommodation should be provided*, it is estimated as a general rule that the children of the class for which school places in elementary schools are required constitute one-sixth of the total population. That rule was acted upon for many years in cases where building grants were made by the Education Department, and was generally found practically accurate. The rule was subject to modification in districts where the circumstances are exceptional, and the Board of Education, in determining whether there was "efficient and suitable provision" in a particular district within the meaning of this section, have been guided by the returns and reports of their inspectors. When the school age is increased to 14, considerably more accommodation will be necessary.

It was the rule of the Education Department to require suitable accommodation to be provided for children between the ages of three and five. Now under sec. 19 of the Education Act, 1918, power is given to the Local Education Authorities to provide nursery schools. Although the attendance of children at nursery schools is not compulsory, grants are offered for them, and the Board of Education attach importance to their attendance, p. 417.

The *accommodation* that will be *afforded by any particular school* is determined by the Board of Education. The capacity of a schoolroom, and the number of children it can accommodate, depend not merely upon its area, but also on its shape, on the nature and arrangement of the school furniture, and on the positions of the doors and fireplaces. See Art. 17 of the Elementary Education Code, 1919.

The Board of Education have issued Rules to be observed in planning and fitting up Public Elementary Schools [1902, Cd. 1332], which may be obtained of Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C.

In the Rules referred to it is stated that "No school should ordinarily be built to accommodate more than 1000 to 1200 children in three departments. No single department should accommodate more than

400 children. A large school in three departments might conveniently be divided in the following proportions :—Boys 360, girls 360, infants 380."

As to school accommodation for blind and deaf children, see 56 & 57 Vict., c. 42, p. 447; and for defective and epileptic children, see 62 & 63 Vict., 32, p. 460.

Regulations for Conduct of Public Elementary School.

*7. Every elementary school (1) which is conducted in accordance with the following regulations shall be a public elementary school within the meaning of this Act (2) ; and every public elementary school shall be conducted in accordance with the following regulations (a copy of which regulations shall be conspicuously put up in every such school), namely :—

(1.) It shall not be required, as a condition of any child being admitted into or continuing in the school, that he shall attend or abstain from attending any Sunday school, or any place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which observance or instruction he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belongs : (3)

(2.) The time or times during which any religious observance is practised or instruction in religious subjects is given at any meeting of the school shall be either at the beginning or at the end, or at the beginning and the end, of such meeting, and shall be inserted in a time-table to be approved by the Education Department, and to be kept permanently and conspicuously affixed in every schoolroom ; and any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school : (4)

(3.) The school shall be open at all times to the inspection of any of Her Majesty's Inspectors, so, however, that it shall be no part of the duties of such inspector to inquire into any instruction in religious subjects given at such school, or to examine any scholar therein in religious knowledge or in any religious subject or book : (5)

(4.) The school shall be conducted in accordance with the

* Sec. 7 is frequently spoken of as the "Conscience Clause."

conditions required to be fulfilled by an elementary school in order to obtain an annual Parliamentary Grant. (6)

Note 7.—(1) For definition of the term "elementary school," see sec. 3, p. 2.

(2) Education grants are made under secs. 96 and 97, p. 70, and the regulations provided for in sec. 44 of the Education Act, 1918, p. 413. No parliamentary grant can be made to any elementary school which is not a public elementary school conducted in accordance with the regulations. See also secs. 96, 97 and 99 and the Education Act, 1876, sec. 20, *post*, and the Elementary Education Code, 1919, Art. 31. As to further conditions to be fulfilled in the case of schools not provided by the Local Education Authority, see sec. 7 of the Education Act, 1902, p. 139. In the case of a school provided by a Local Education Authority, not only are the regulations referred to in this section to be observed, but no religious catechism, or religious formulary distinctive of any particular denomination, is to be taught in the school (sec. 14). As to schools to be deemed to be provided by the Local Education Authority, see the Education Act, 1902, Sch. II. (13), p. 222.

With regard to the powers of managers of a school to comply with the conditions required to be fulfilled in order to obtain a parliamentary grant, see sec. 99; the Education Act, 1902, Sch. III. (7), p. 227, and the Education (Compliance with Conditions of Grants) Act, 1919, p. 443.

(3) The term "parent" includes guardian and every person who is liable to maintain, or has the actual custody of, any child (sec. 3). It is not specified in what manner the parent is to "withdraw" the child from religious instruction and observances in the school. It would be convenient that the notice of the parent's wish in the matter should be given in writing, but a verbal intimation to the managers or the teacher would probably be deemed sufficient. When no such notice or intimation has been received, and the child refuses or fails to attend the religious instruction or observances in the school, steps should be taken to ascertain from the parent whether or not it is his intention that the child should be withdrawn from such instruction and observances.

The latter part of the sub-section was specially intended to meet the cases of Jewish and Roman Catholic children.

In a case in which it appeared that the vicar had distributed on a Sunday to children attending the National day school—a public elementary school—prizes connected with secular subjects, the Education Department stated that they considered that prizes for secular knowledge given to children in any public elementary school should be open to all scholars, and should be distributed at a time when religious instruction is not given.

See the case of *Blencowe* v. *Northamptonshire County Council* cited under sec. 7 of the Education Act, 1902, p. 146.

(4) When the school is held both in the morning and in the afternoon, the religious observance or instruction in religious subjects may take place not only at the beginning or end, or beginning and end, of the day's secular instruction, but of the morning and afternoon meetings respectively. A parent may withdraw his child from the religious observance or instruction, but the child is not to be withdrawn from the school during the observance or instruction when the school arrangements will admit of secular and religious instruction being carried on in different parts of the school at the same time.

It rests with the Local Education Authority to determine the duration of the morning and afternoon meetings of a public elementary school,

subject to secular instruction being given for not less than the time required by the Code. As to religious instruction during school hours in schools not provided by the local education authority, see. sec. 7 (1) (*a*) of the Education Act, 1902, p. 139.

At a meeting of the Committee of Council on Education, on the 7th of February, 1871, the following resolutions with reference to this section were adopted :—" (1) That the time-table of each public elementary school shall be submitted to the inspector of the district, at his first visit to the school after the 30th of April, 1871. (2) That the inspector shall enter on every time-table which fulfils the requisite conditions, ' Approved, on behalf of the Education Department,' with his signature and the date of his visit. (3) That the inspector may approve any time-table which, while conforming to sec. 7 (No. 2) of the Education Act in respect of the time or times appointed for religious observances or instruction, sets apart for instruction in secular subjects at least two consecutive hours at each morning and afternoon meeting, and one hour and a half at each evening meeting of the school. (4) That the inspector shall not express any opinion as to the time or times appointed for religious observances, or instruction, or as to the nature of such instruction, but shall confine himself to seeing that the prescribed amount of time is secured for secular instruction. (5) That before signing the time-table the inspector shall satisfy himself : (*a*) that a copy of the regulations contained in sec. 7 of the Education Act is conspicuously put up in the school ; (*b*) that the time-table is printed, or written, in distinct characters, and that sufficient copies of it are provided to be put up in every schoolroom ; (*c*) that if the school premises admit of it, the children withdrawn by their parents from religious observances or instruction receive, by themselves, instruction in secular subjects during the time or times set apart for religious instruction or observances. (6) That the inspector, at any visit which he pays to a school without notice, shall report to the Education Department if he finds that the work of the school is not being carried on according to the approved time-table, or that the time-table itself is not exhibited in every schoolroom. (7) That if any five parents or guardians of scholars for the time being attending a school make complaint in writing to the Education Department that a time-table, approved by the inspector, is not in accordance with this minute, the Education Department, on receiving such complaint, shall make such inquiry and order in the matter as they may think fit."

This minute of the 7th of February, 1871, was modified by a minute of the 2nd of April, 1878, which records the following resolution of the Committee of Council on Education :—

" 1. That the time-table of each public elementary school shall be submitted to the inspector of the district *at every visit he pays to the school.*

" 2. That the inspector may approve any time-table which, while conforming to sec. 7 (2) of the Elementary Education Act, 1870, in respect of the time or times appointed for religious observances or instruction, sets apart at *each meeting of a school*, for the instruction in secular subjects of *each class or division of the school, at least the amount of time prescribed by the Code.*

" 3 (*a.*) Provided that at each meeting of a school instruction in secular subjects is continuously given for the prescribed time, by or under the personal supervision of the principal teacher, and that there is a class-room attached to the school, a time-table may be approved which provides for religious instruction (in accordance with the provisions of sec. 7, and in board schools of sec. 14 (2), of the Act of 1870) being given in the class-room to separate classes or divisions of the

school, either at the beginning or end of the meeting; and the time of secular instruction need not be the same for the whole school.

"3 (*b.*) If there is no class-room attached to a school, the time for secular instruction must be the same for the whole school."

So far as a time-table sets forth the time or times to be devoted to instruction in religious subjects no important change should be made without the sanction of the inspector, unless the change is sanctioned by the L.E.A. pursuant to a general arrangement arrived at after consultation with the inspector. The parents of children attending a public elementary school ought to know for certain at what time or times they may withdraw their children, if they wish to do so. Under the Elementary Education Code, 1919, Art. 6 (*e*), one of the conditions to be fulfilled by a school in order to obtain a parliamentary grant is that the time-table must be approved for the school by the inspector on behalf of the Board of Education, and must be open at any reasonable time, except the ordinary school hours, to the inspection of the parent of any scholar attending the school who makes a written application to see it.

In a circular letter issued to Her Majesty's inspectors of schools on the 16th of January, 1878, the Education Department stated as follows:—"It should never be forgotten that a child withdrawn from the whole or part of the religious teaching or observances of a school, should in no way be subjected to disparaging treatment on account of his parent having thought fit to avail himself of his statutory right in this matter. But, on the other hand, in your communications respecting the arrangements of the time-tables, you will remember that you have no right to interfere in any way with the liberty allowed by statue to managers of providing for religious teaching and observances at the beginning and end of the two daily school meetings. In your allusions to this subject and to the conscience clause, you will be most careful not to lead managers or teacher to suppose that the complete provision which has now been made by the Legislature for protecting the rights of conscience, as an essential part of a system of compulsory attendance, and the limitation of the necessary examination by Her Majesty's inspectors to secular subjects, imply that the State is indifferent to the moral character of the schools, or in any way unfriendly to religious teaching."

See sec. 7 of the Education Act, 1876, p. 85, as to the duty of the Local Education Authority to report to the Board of Education any infraction of the provisions of this section in any public elementary school within their district which may come to their knowledge, and also to forward to the Board of Education any complaint which they may receive of the infraction of these provisions.

(5) See the Circular letter of the Board of Education, No. 1143, on page 660. With regard to examinations in religious subjects of children in a public elementary school not provided by a local education authority, by an inspector other than one of His Majesty's inspectors, see sec. 76.

(6) As to the general conditions to be fulfilled by a school in order to obtain an annual grant, see note (2) to this section.

Management and Maintenance of Schools by School Board.

Management of School by School Board.

14. Every school provided by a school board shall be conducted under the control and management of such board in accordance with the following regulations: (1)

(1.) The school shall be a public elementary school within the meaning of this Act ; (2)

(2.) No religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school. (3)

Note 14.—(1) This section (known as the Cowper-Temple Clause) applies to all schools provided by Local Education Authorities, and to those schools only. Any school which has been provided by a school board, or which under sec. 23 is to be deemed to be a school provided by a school board, is to be treated as a school which has been provided by the Local Education Authority, or which is deemed to have been so provided—Education Act, 1902, Sch. II. (13), p. 222.

The distinction between " control and manage " and " maintain and keep efficient " was discussed by Lord Haldane, L.C., in his judgment in *Gillow* v. *Durham County Council* (1913, A. C., on p. 62). Sec. 14 of the Act of 1870 enacted that every school provided by a school board is to be conducted under the control and management of the board. But if the board chose to delegate that control and management to local managers, then, by sec. 15, it was entitled to do so. The school board maintained and kept efficient such a school in common with all other schools provided by the board. Sec. 18 made provision for that purpose, using the words " maintain and keep efficient " as covering the cases of both direct and delegated control. These sections shew the use which the legislature made of the words " control and manage " as distinguished from " maintain and keep efficient." The latter words fall something short of general control and management.

(2) For definition of the term " public elementary school," see sec. 7. In order to render a school a public elementary school it is necessary under sec. 7 of the Act that it " shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant." For conditions to be fulfilled by a school in order to obtain an annual grant, see secs. 96 & 97 ; the Education Act, 1876, sec. 20, p. 95 ; and Arts. 26-31 in the Elementary Education Code, 1919. See also the conditions prescribed with regard to schools not provided by the Local Education Authority in sec. 7 of the Education Act, 1902, p. 140.

In the case of *The Queen on the Prosecution of the Buckingham School Board* v. *The Town Council of Buckingham*, which came before the Queen's Bench Division on the 15th of November, 1876, a question was raised as to the effect of this provision. A rule *nisi* had been granted for a *mandamus* to order the defendants as the rating authority for the borough of Buckingham to pay to the school board of the borough a sum of £150 to meet a deficiency in the school fund. The deficiency, at least in part, was in respect of expenses on account of a school which, in the opinion of the Education Department, was not a public elementary school, and it appeared that the town council, in refusing to pay the amount called for by the precept, acted upon the advice of that Department. The school board, according to the affidavits, proposed to purchase a site for a school, and to borrow for the purpose, but as the consent of the Education Department was necessary to enable them to obtain a loan, and that consent was not given, the proposal was abandoned. The school board then hired a chapel, and fitted it up as a school, and it was in respect of this school that the question arose. For the Education Department it was argued that the school board had no authority to incur an expenditure in connection with a school which was not a public elementary school, and that this school was not a

public elementary school, as it was not conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant. One of those conditions was, that a "time-table" approved by the Education Department should be kept permanently and conspicuously affixed in the schoolroom. In the case of this school, no time-table had been approved by the Education Department, and there had been no visit or report on the school by one of Her Majesty's inspectors of schools—such visit and report being necessary for the fulfilment of the conditions prescribed with reference to the parliamentary grant. It was not alleged, however, that the school board had not fulfilled these conditions, so far as they could do so independently of the Education Department. The Court made the rule absolute, but observed that it would not be satisfactory to come to a decision upon the affidavits then before them, and that they would have better materials for deciding the point, which was one of great importance, when the return to the *mandamus* was made. No further proceedings were, however, taken in the case.

The question as to the age up to which there might be admission to a public elementary school provided by a school board was considered in *R.* v. *Cockerton* ([1901] 1 Q. B. 322).

Sec. 22 (2) of the Education Act, 1902, now prescribes, subject to the exceptions therein referred to, a limit to the age of children for whom instruction may be provided in a public elementary school. See also sec. 8 (5) of the Education Act, 1918, p. 359.

(3) Under no circumstances is the religious instruction in any school provided by a Local Education Authority to include the teaching of any religious catechism or religious formulary which is distinctive of any particular denomination. Moreover, whatever religious observance or instruction may take place in the school must be subject to all the conditions set forth in the regulations prescribed by sec. 7, and in accordance with the "time-table" contemplated by that section.

The Board of Education, having taken the opinion of the Law Officers of the Crown, decided that the teaching of the Apostles' Creed is not a contravention of this enactment, but that the teaching of that part of the Church Catechism known as the "Duties" is a contravention.

The Education Department stated that they considered that school boards which provided religious instruction in their schools were justified in securing, by inspection and examination of the scholars, information as to the efficiency of the instruction. If the inspection takes place at any ordinary meeting of the school it must be confined to the time for religious instruction prescribed by the time-table. If the time allowed by the time-table is not sufficient the board may fix some other time, not being a meeting of the school, for the purpose. Sufficient notice should be given to the parents to enable them to avail themselves of their right to withdraw their children. The notice of the religious examination should expressly point out that the children may be withdrawn. It seems desirable that such religious examination should take place, say on Saturdays, or on some day when an ordinary meeting of the school would not otherwise be held. In all cases the proceedings must, of course, be subject to the provisions of the Elementary Education Act of 1870, secs. 7 (2) and 14 (2).

Schools which have been transferred to a school board under the provisions of sec. 23 are, during such times as the Local Education Authority have any control over the schools, to be deemed to be schools "provided" by them within the meaning of sec. 14. See also the Education Act, 1873, sec. 13, *post*, with reference to schools connected

with endowments, charities, or trusts accepted by Local Education Authorities, whether as the successors of school boards or otherwise.

Regulations to the following effect were adopted in whole or in part by a large number of school boards with reference to *religious instruction, prayers, and hymns*, in schools provided by them :— 1 That in the schools provided by the board the Bible shall be read, and there shall be given such explanations and such instruction therefrom in the principles of morality and religion as are suited to the capacities of children ; provided always (*a*) that in such explanations and instruction the provisions of the Act in secs. 7 and 14 be strictly observed both in letter and spirit, and that no attempt be made in any such schools to attach children to any particular denomination ; (*b*) that in regard of any particular school the board shall consider and determine upon any application by managers, parents, or ratepayers of the district, who may show special cause for exception of the school from the operation of this resolution, in whole or in part. 2. That such explanations and instruction as are recognized by the foregoing regulation shall be given by the responsible teachers of the school. In this Article the term "responsible teachers" does not include pupil teachers. 3. That in accordance with the general practice of existing elementary schools provision may be made for offering prayer and using hymns in schools provided by the board at the "time or times" when, according to sec. 7, sub-section 2, of the Elementary Education Act, "religious observances" may be "practised." 4. That the arrangements for such "religious observances" be left to the discretion of the teacher and managers of each school, with the right of appeal to the board by teacher, managers, parents, or ratepayers of the district : Provided always that, in the offering of any prayers and in the use of any hymns, the provisions of the Act in secs. 7 and 14 be strictly observed, both in letter and in spirit, and that no attempt be made to attach children to any particular denomination. 5. That during the time of religious teaching or religious observance, any children withdrawn from such teaching, or observance, shall receive separate instruction in secular subjects. 6. That a copy of secs. 7 and 14 of the Elementary Education Act, 1870, and also of the preceding regulations, must be hung up in a conspicuous part of the schoolroom.

Corporal Punishment.

As regards *the corporal punishment of children*, the Education Department, in the instructions to H.M. inspectors, stated as follows :—"My Lords regret to receive frequent complaints of the excessive use of corporal punishment in schools, and of its occasional infliction by assistants and pupil teachers, and even by managers. The subject is one on which your own observation is necessarily incomplete, since children are not likely to be punished in your presence on the day of inspection. But you will not fail in your intercourse with teachers and managers to impress upon them that the more thoroughly a teacher is qualified for his position, by skill, character, and personal influence, the less necessary it is for him to resort to corporal chastisement at all. When, however, the necessity arises, the punishment should be administered by the head teacher."

In Revised Instructions, 1901, the Board of Education state that a separate book (Punishment Book) must be kept in which every case of corporal punishment inflicted in the school should be entered.

These instructions also contain the following observations on punishments generally : "If discipline were perfectly efficient, punishment would be unknown, for the result of efficient discipline is to engender the good habits which render punishment unnecessary. Order, diligence, and obedience, which are only maintained by frequent punishment or the dread of it, do not constitute good discipline. Indeed, the

infliction of punishment, is, to some extent, a confession of defeat by the authority that inflicts it; for the object of discipline is to prevent the commission of faults. No punishment which excites the emotion of terror in a child should ever be employed. In an infants' school no punishment should be permitted which causes bodily pain. In schools for older children, corporal punishment should be discouraged as an ordinary expedient in boys' schools, and altogether in girls' schools. The punishment register, which is required in all schools, may serve some good purpose if it induces teachers to reflect occasionally on their methods, and to consider whether these really tend to the formation of the habit of good conduct."

As to the liability of teachers for caning boys on the hand, the case of *Gardner* v. *Bygrave*, L. G. C. (1890) 51; 53 J. P. 743, may be referred to. In that case it appeared that a summons was taken out against the appellant, who was the headmaster of a board school, for having unlawfully assaulted and beaten the respondent who was a pupil attending the school. At the hearing it appeared that the respondent committed a fault which properly called for corporal punishment by the appellant, who inflicted the same by giving the respondent four strokes with a cane on the hand. The magistrate was of opinion that if caning on the hand was a proper method of punishment to adopt in the circumstances of the case, the punishment was inflicted unobjectionably; but he was also of opinion that punishment by caning on the hand, however inflicted, was necessarily attended by risk of serious injury to the hand; that there were methods of corporal punishment quite as available and efficacious, and not necessarily attended by any risk, of which methods, if the appellant had used due caution, one or another would have been substituted by him for that which he adopted, and that for these reasons caning on the hand was in the circumstances of the case improper, and ought not to have been inflicted. He accordingly convicted the appellant of the assault. On a case stated, the High Court quashed the conviction. Mr. Justice Charles observed that the judgment of the magistrate was grounded on his opinion that caning on the hand, however inflicted, was necessarily attended by risk of serious injury to the hand. But he found as a fact that in this case it was unobjectionably inflicted, and did not find that any serious injury was caused by it. He was wrong in thinking that under these circumstances the possible risk made it criminal for the master to cane on the hand.

With respect to the right of a teacher to punish a boy for conduct on his way to school, see *Cleary* v. *Booth*, [1893] 1 Q. B. 465; 62 L. J. M. C. 87; 68 L. T. 349; 41 W. R. 391. In that case the headmaster of a board school was charged with assaulting a boy attending the school. It appeared that a boy when coming to the school was struck by a boy belonging to the same school, and with whom was another boy also belonging to the school, and that complaint was made to the master on their arrival at the school, who then and there punished the boy who committed the assault, and also the boy who was in his company. The justices convicted the master, on the ground that he was not entitled to punish a boy for anything done by him although against another boy on his way to the same school, the act being committed off the school premises and unconnected with the school. It was held on a case stated for the opinion of the High Court that the authority of the master extended not only to acts done by his boys when in school, but also to acts done by them on the way to and from school, and that this was more especially so in the present case, where the offence complained of related to a boy in the same school. Among the powers delegated by the parents to the schoolmaster was such a power as was exercised by the master in this case.

In *Mansell* v. *Griffin* (1908) 1 K. B. 160, 6 L. G. R., 548, it was laid down that the ordinary authority of the head teacher in a public elementary school to inflict corporal punishment on a child extends to the responsible teachers who have charge of a class. The teacher of a class in such a school is entitled to use the ordinary means of punishment, provided that the punishment inflicted is moderate, is not dictated by a bad motive, and is such as is usually administered in schools, and is such as the parent may expect his child to receive.

In *Ripper* v. *Rate* (*Times*, 17th January, 1919), the plaintiff, a certificated teacher and headmaster of a non-provided school claimed damages for libel from the defendant, on the ground that she had made charges against him of having inflicted great cruelty upon the school boys under his control. It appeared that several boys were caned by the plaintiff for various acts of insubordination, and that the defendant had written to the Secretary of the Surrey Education Committee complaining of the plaintiff's conduct.

The defence was that the occasion on which the letters were written was privileged and that there was no evidence of express malice. Mr. Justice Lush held that the occasion was privileged. He said that it was enough to say that the defendant had subscribed to the school, and that the letters were all written to the Secretary of the Education Committee who had jurisdiction over the headmaster in matters of misconduct. That being so, the plaintiff had to prove express malice on the part of the defendant It was not sufficient to show that there might have been some sinister motive in the defendant : the plaintiff must prove that there actually was such a motive. It was clear that there was no extrinsic evidence of malice. There was none outside the letters themselves. Indeed, the contrary was shown by the letter which the defendant had written to the plaintiff himself. That tended to show that there was anything but malice. There was not a particle of evidence that the defendant had any desire to do anything but help towards the truth. Evidence that the letters contained untruths was not evidence of malice. There was no evidence of express malice—none that called upon the defendant for an explanation. The action failed and judgment was given for the defendant, with costs.

Home Lessons.

As regards home lessons, it was stated in instructions issued to H.M. inspectors by the Education Department, that the subject is mainly one of internal discipline, and not necessarily within the purview of the inspectors. "For delicate or very young children such lessons are plainly unsuitable, and the special circumstances of some schools render it inexpedient to require home tasks in any form. Of such circumstances the local managers are the best judges. But in the upper classes of good schools, in which the teachers exert a right influence and take an interest in their work, the practice of giving short exercises to be performed at home is attended with no difficulty, and is open to no practical objection. The best teachers use such exercises rather to illustrate, and to fix in the memory, lessons which have already been explained in school, than to break new ground or to call for new mental effort. This purpose is served by lessons of a very simple and definite character—a sum, a short poetical extract, a list of names or dates, a letter, an outline map, or a parsing exercise —such as may readily be prepared in half an hour, and may admit of very easy testing and correction on the following day. When these conditions are fulfilled the home task is found to have a very valuable effect, not only in helping the progress of the scholar, and in encouraging the habit of application, but also in awakening, on the part of the parents an interest in school work."

At the same time, it is to be borne in mind that a child should not be punished by detention at school for not doing home lessons. In *Hunter* v. *Johnson* (L. R. 13 Q. B. D. 225; 53 L. J. M. C. 182; 32 W. R. 857), it was held that the Education Acts do not authorise the enforcement of the preparation of lessons at home by children attending a board school: and where a child was detained at school by the teacher after school hours for not having done home lessons, the master was held liable to be convicted for an assault.

Liability for Accidents.

As regards personal liability for injury caused by an accident to a scholar in a public elementary school, the case of *Crisp* v. *Thomas* (62 L. T. 810), may be referred to. In that case the plaintiff sued by her father as her next friend to recover damages for personal injuries caused by the defendant or his servants negligently allowing a board or easel to fall upon her in the school of which he was an *ex officio* trustee and member of the committee of management. It was alleged that the plaintiff, who was a scholar in the school, had sustained injury by reason of the negligence of the teachers, a black-board having fallen and struck her on the head. The jury found a verdict for the plaintiff, and assessed the damages at £20. Mr. Justice Charles, however, came to the conclusion that there was no evidence to warrant the verdict at which the jury arrived. He observed that the defendant was an *ex officio* trustee of the school; but it would be intolerable to impose upon him as such trustee a liability for the negligence of the mistress of the school. But he thought that if he had decided against the defendant upon the question of negligence, he should have held him liable as a member of the committee. On an appeal from this decision, it was held (63 L. T. 756) that there was no sufficient evidence of negligence, and that if there had been negligence on the part of the teachers, the defendant, although a member of the committee of the school, was not liable for their negligence.

In *Ching* v. *Surrey County Council* ((1910), 1 K. B. 736; 8 L. G. R. 369), an action for negligence was brought on behalf of a boy who broke his arm while at play in the playground of a school provided by the Surrey County Council as Local Education Authority. The cause of the accident was a hole in the asphalt which covered one portion of the playground, in which hole the plaintiff, while running at play with another boy, caught his toe and falling, broke his arm. The action was tried before Bucknill J. and a jury at the Guildford Assizes. The jury found for the plaintiff with damages £83 19*s.* 6*d.*, and the question was argued whether the defendants were liable in law. Bucknill J. held that the defendants were bound to maintain and keep efficient the playgrounds of a provided school, and to keep them in good repair and safe for the use of the scholars while lawfully there, and as the defendants had failed in their duty they were liable in damages to the plaintiff. The Surrey County Council appealed.

The Earl of Halsbury in giving judgment in the Court of Appeal said no question arose on matters of fact, and the Court was not disposed to disturb the findings of the jury. The real question was one of law. Assuming that somebody was responsible for the negligence which caused the injury, the question was who was responsible. He was of of opinion that that question was determined by statute. The duties of the School Board were transferred to the County Council by the Education Act, 1902, and one of those duties was to make and maintain and keep efficient playgrounds of a provided school. The defendants pleaded that if anyone was liable it was the school managers, but that even if the managers were liable, that would not make the defendants liable. In his Lordship's opinion the County Council had

rightly been made the defendants, and the appeal would be dismissed with costs.

The Lords Justices concurred : Farwell L. J. said that the County Council had the statutory duty imposed upon them to keep the schools in repair ; that included the buildings and the playgrounds.

This case was followed in *Morris* v. *Carnarvon County Council* ((1910), 1 K. B. 840 ; 8 L. G. R. 369). A child of six was a pupil at a school of the Council who were the Local Education Authority. One day she arrived late and contrary to the instructions given to children who arrived late, she passed through a certain heavy swing door, which connected two rooms in the school. She was ordered by a mistress to retire, and she left the room by the swing door. No one assisted her to open it and, as she was going through, the door swung back and injured one of her fingers, which had to be amputated. In an action for damages the jury found that the Council were negligent in allowing the door to remain as it was when they took over the premises from the late school board ; and also that the door as originally constructed was not suitable for infants. The County Court judge entered judgment for the plaintiff, and his decision was affirmed by the King's Bench Divisional Court and the Court of Appeal. The Divisional Court thought that the door was in the nature of a trap, that it was a trap when constructed and that the Council were negligent to allow it to remain. That view did not find favour in the Court of Appeal whose judgment was based on the existence of a statutory obligation which the Council was bound to observe. The Court held that the case came within Ching v. Surrey County Council, as in their opinion there was an obligation on the defendants to remove this dangerous door and to substitute a safer means of access to the schoolroom.

In *Smith* v. *Martin and the Hull Corporation* ((1911), 2 K. B. 775 ; 9 L. G. R. 780), the plaintiff, a girl of 13, attended a public elementary school provided by the Corporation as the Local Education Authority for the district, who appointed and paid the teachers at the school. Miss Martin, one of the teachers, told the plaintiff during school hours to poke the fire and draw out the damper in a room where the teachers had their lunch. In carrying out the teacher's order the girl's clothes caught fire and she was seriously hurt. The jury found that the act of the teacher was negligent and the judge and the Court of Appeal held that there was evidence to support the finding. Judgment was entered for the plaintiff against the teacher ; but the action against the Corporation was dismissed, on the ground that they were not responsible for the teacher's negligence in a matter not connected directly with her duties as a teacher.

On appeal by the plaintiff, the Court held, first, that the relation of master and servant existed between the Local Education Authority and the teachers employed by them ; and, secondly, that the act of the teacher was within the scope of her employment, which was not strictly confined to teaching alone ; and that therefore the Corporation was liable to the plaintiff for the consequences of the teacher's negligent act.

In *Jackson* v. *London County Council and Chappell* (10 L. G. R. 348 ; 76 J. P. 217), the Council as Local Education Authority employed Chappell, a contractor, to repair the ceilings of a provided school, and Chappell for that purpose sent to the school materials consisting of lime and hair in a truck. Before the repairs were done the school re-opened, and the headmaster instructed the caretaker to have the stuff removed as he considered it dangerous. The caretaker telephoned to the contractor to remove it, and he sent a man but the man did not remove the stuff. The teachers prevented the boys from interfering with the

stuff while they were in the playground in the intervals ; but when the boys came out of school in the afternoon some of them including the plaintiff pelted each other with the stuff. Some of it struck the plaintiff in the face and injured his eye.

In an action by the plaintiff against the Education Authority and the contractor the jury found that both were negligent and awarded £25 damages against each defendant ; but the judge held that there was no evidence on which the jury could find that both defendants had been negligent, and he entered judgment for £50 against the defendants generally. On appeal the Court of Appeal held that the headmaster having admitted that he knew of the presence of the stuff and that he considered that it was dangerous for it to be left unguarded in the playground, the judgment was rightly entered against the defendant council; and further, that Chappell having been told to see that it was removed before the school was re-opened, the fact that he had sent a man to remove it who did not do so was evidence of negligence against him also. Accordingly the appeal by both defendants was dismissed with costs.

In *Shepherd* v. *Essex County Council*, a boy of fifteen was attending a chemical class at the Council's Ilford School. He obtained a piece of phosphorous and put it into his pocket. Shortly afterwards it took fire and the boy was severely burnt. In an action for damages for negligence against the Council and the classmaster, Darling J. directed the jury that the duty of a schoolmaster in relation to his pupils was that of a careful father. The jury found on the evidence that there had been no negligence on the part of the defendants (29 T. L. R. 303).

In *Chilvers* v. *London County Council* (80 J. P. 246; 32 T. L. R. 363), the plaintiff, who was five years old, was a pupil at a non-provided public elementary school, and another pupil brought to the school some toy soldiers with the teacher's knowledge and approval. One of the toy soldiers represented a lancer with a movable lance and the children played with it. The plaintiff fell on the toy soldiers and his eye was injured by something sharp. In an action by the plaintiff against the Education Authority and the managers of the school for negligence, Mr. Justice Bailhache held that as the toy was similar to those with which the children generally played, there was no evidence of negligence to go to the jury, and that the plaintiffs could not recover.

See also *Shrimpton* v. *Hertfordshire County Council* (H. of Lords) (104 L. T. 145 ; 9 L. G. R. 397), noted under sec. 23 of the Education Act, 1902, p. 207, and *Smerkinich* v. *Newport Corporation*, cited on p. 128.

Maintenance by School Board of Schools and Sufficient School Accommodation.

18. The school board shall maintain and keep efficient every school provided by such board, and shall from time to time provide such additional school accommodation as is [in the opinion of the Board of Education] necessary in order to supply a sufficient amount of public school accommodation for their district. (1)

A school board may discontinue any school provided by them, or change the site of any such school, if they satisfy the Education Department that the school to be discontinued is unnecessary, or that such change of site is expedient. (2) . . .

Note 18.—(1) In *A. G. and the Board of Education* v. *West Riding of Yorks. County Council* (1907), A. C. 29 ; 5 L. G. R. 89), the House of

Lords held (reversing the decision of the Court of Appeal) that a Local Education Authority does not maintain a non-provided school as required by sec. 7 (1) of the Education Act, 1902, if it refuses to pay what is reasonable for denominational religious instruction lawfully given during school hours.

In this section the words "in the opinion of the Board of Education" are substituted for "in their opinion" (Education Act, 1902, Sch. III. (6), p. 227), and it will therefore devolve on the Board of Education and not on the Local Education Authority to determine whether additional school accommodation is necessary.

This section refers to schools provided by the Local Education Authority. Any school which has been provided by a school board, or which under sec. 23 or the Education Act, 1873, sec. 13, *post*, is to be deemed to be a school provided by a school board, is to be treated as a school which has been provided by the Local Education Authority (Education Act, 1902, Sch. II. (13), p. 222).

As to the term "public school accommodation," see sec. 5 of this Act and the notes thereto.

With regard to the powers of a Local Education Authority to provide sufficient public school accommodation by building or otherwise, see sec. 19. As to the provision of new schools, or enlargement of schools, see secs. 8 and 9 of the Education Act, 1902, p. 157-8.

See also sec. 7 of the last-mentioned Act as to the duty of the Local Education Authority to maintain and keep efficient all public elementary schools within their area which are necessary, when the schools are provided by them; and in case of schools not provided by them, when the conditions referred to in that section are fulfilled. As to the closing of non-provided schools, see sec. 30 of the Education Act, 1918.

Sec. 16 of the Education Act, 1902, provides for the enforcement of the duties of the Local Education Authority under the Elementary Education Acts; but see also sec. 44 (5) of the Education Act, 1918, on p. 414.

As to the provision of accommodation for blind and deaf children, see p. 446, and for the defective and epileptic children, p. 462.

(2) With reference to the sale, leasing, or exchange of any land or school site belonging to a Local Education Authority, see secs. 22, 78; sec. 1 of the Education (Administrative Provisions) Act, 1907; and sec. 5 of the Education (Administrative Provisions) Act, 1909; and as to the re-transfer of a school which has been transferred by the managers to a school board, see sec. 24 of the Act of 1870 (p. 38).

Powers of School Board for providing Schools.

19. Every school board for the purpose of providing sufficient public school accommodation for their district, . . . may provide, by building or otherwise, schoolhouses properly fitted up, and improve, enlarge, and fit up any schoolhouse provided by them, and supply school apparatus and everything necessary for the efficiency of the schools provided by them, and purchase and take on lease any land, and any right over land, or may exercise any of such powers.

Note 19.—As to the provision by a Local Education Authority of sufficient public school accommodation, see secs. 7 and 18 and notes on those sections.

With regard to the duty which devolves on the Local Education Authority of maintaining and keeping efficient public elementary schools

within their area which are necessary, see the Education Act, 1902, secs. 7 and 16.

For definition of "schoolhouse," see sec. 3.

With respect to the use by the Local Education Authority of school furniture and apparatus belonging to the trustees or managers of a public elementary school not provided by the Local Education Authority, see the Education Act, 1902, Sch. II. (14).

As regards the power of a Local Education Authority to borrow for the provision of school accommodation, see sec. 19, Education Act, 1902, p. 192.

As to the powers of a Local Education Authority for the purchase of land, &c., see sec. 20, and sec. 34 of the Education Act, 1918.

The 41 & 42 Vict., c. 42 (an Act to amend and further extend the Acts for the Commutation of Tithes in England and Wales), provides that in all cases where land charged with rent-charge in lieu of tithes is taken for the erection of any school under the Elementary Education Act, or the enlarging and improving of the premises or buildings occupied or used as a school under that Act, the persons proposing to carry out the works, buildings or improvements shall as soon as they are in possession of the land, and before the land is applied to the purpose, apply to the Tithe Commissioners to order the redemption of the rent-charge for a sum of money equal to twenty-five times the amount thereof; and that the redemption money with the expenses incident to the redemption shall be paid to the commissioners within a time to be fixed by such order or within any enlarged time the commissioners may appoint, such money to be applied by the commissioners in the manner provided by the Tithe Commutation Acts. For the purposes of this enactment the Minister of Agriculture is now substituted for the Tithe Commissioners.

As to the rules which the Board of Education have laid down with regard to the planning and fitting up of public elementary schools, see note to sec. 5, p. 5.

The Local Government Board have in several instances sanctioned the produce of the sale of parish property being applied towards defraying the cost of the establishment by school boards of public elementary schools, where the parish has been free from debt in respect of workhouse buildings.

With respect to the provision of school accommodation for blind and deaf children, see the Elementary Education (Blind and Deaf Children) Act, 1893, *post*, p. 446, and for defective and epileptic children, see the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914, *post*, p. 462.

The Law Officers of the Crown (Sir R. Baggallay and Sir J. Holker) advised that a school board could with the view of maintaining the efficiency of a school, purchase books for prizes. With regard to prizes for school attendance, the Education Department stated that whilst they offered no objection to prizes given to a few of the most regular scholars, and had reason to believe that the Local Government Board held that a school board could legally award a reasonable number of prizes to such scholars as have attended best, such an award to all children who have attended a certain minimum number of times would not be legal.

A legacy for a fives court, or for a prize for athletics, is a valid charitable gift. *In re Mariette* (1915), 2 ch. 284.

In a case in which an auditor disallowed in the accounts of a school board the cost of medals with clasps, given by the school board to children in the school who had been selected as deserving a reward for good attendance and diligence in their school work, the Local Government Board on appeal reversed the auditor's decision.

The Education Department have stated that expenditure on foot-

balls, skipping ropes, and other articles required for games when the time-table provides for games as suitable physical exercises is a legitimate application of school income: see also sec. 13 of the Education (Administrative Provisions) Act, 1907; and sec. 17 of the Education Act, 1918, p. 378.

As to the use by the Local Education Authority of any room in a schoolhouse, in the case of a school not provided by the Local Education Authority, out of school hours for any educational purpose, when they have no suitable accommodation in schools provided by them, see the Education Act, 1902, sec. 7 (1) (*e*) and (2), p. 140.

With regard to the *use of schoolrooms for parliamentary elections*, sec. 6 of the Ballot Act, 1872, provides that the returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll, any room in a school receiving a grant out of moneys provided by Parliament; but he is to make good any expense incurred by the person or body of persons having control over the same on account of its being used for taking the poll as aforesaid. There is no similar provision with regard to *municipal elections*, but the Local Government Act, 1888, by sec. 75, makes the provision above referred to in the Ballot Act applicable to *elections of County Councillors* under the Local Government Act, 1888, and further provides that the returning officer may use the rooms free of charge for hearing objections to nomination papers and for counting votes in the case of such elections. The Local Government Act, 1894, by sec. 48 (3) provides to the same effect with respect to *elections of Guardians, Urban and Rural District Councillors* and *Parish Councillors*, and other elections under that Act.

Sec. 25 of the Representation of the People Act, 1918, contains the following provision in regard to the right to the use of elementary schools by candidates at parliamentary elections,—

"25.—(1.) A candidate at a parliamentary election (other than a university election) shall be entitled, for the purpose of holding a public meeting in furtherance of his candidature, to the use at reasonable times between the receipt of a writ for the election and the day of the poll, of a suitable room in any public elementary school situated within the constituency for which he is a candidate:

"Provided that this enactment shall not authorise the use of any room used as part of a private dwelling-house nor authorise any interference with the school hours of an elementary day or evening school.

"(2.) A charge may be made to cover any actual and necessary expenses incurred by the Local Education Authority, or by the managers of the school, in respect of the preparation of the room before the meeting for the purposes of the meeting, and after the meeting for school purposes, and for warming, lighting, and cleaning the room.

"(3.) If by reason of the use of any room under this Act any damage is done to the schoolhouse, or to the furniture, fittings, or apparatus, the damage shall be defrayed by the person by whom, or on whose behalf, the meeting is convened."

With respect to the use of a public elementary school in receipt of an annual parliamentary grant as a committee room for the purpose of promoting the election of a candidate at a parliamentary election, sec. 20 of the Corrupt and Illegal Practices Prevention Act, 1883, provides that "The premises of any public elementary school in receipt of an annual parliamentary grant, or any part of any such premises shall not be used as a committee room for the purpose of promoting or procuring the election of a candidate at an election, and if any person hires or uses any such premises or any part thereof for a committee room,

he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring." As regards the definition of "committee room," it is provided by sec. 64 that no room or building is to be deemed to be a committee room for the purposes of the Act by reason only of the candidate or any agent of the candidate addressing therein electors, committee men, or others. A person guilty of the offence of illegal hiring is, on summary conviction, liable to a fine not exceeding £100. A candidate, or an election agent of a candidate, who is personally guilty of an offence of illegal hiring, is to be deemed guilty of an illegal practice, and a person guilty of an illegal practice is, on conviction, liable to a fine not exceeding £100, and is incapable, during a period of five years from the date of his conviction, of being registered as an elector, or voting at any election, whether it be a parliamentary election or an election for a public office held for or within the county or borough in which the illegal practice has been committed.

In *Cheshire* v. *School Board for West Bromwich*, which came before the Master of the Rolls on the 5th December, 1878, the plaintiff applied for an injunction to restrain the school board from allowing a public meeting of Liberals to be held in the board school, and from otherwise using the school for meetings of a political or party character. The plaintiff in an affidavit stated that, owing to the excited state of party feeling in West Bromwich, there was every probability that there would be considerable disturbance and riot at the meeting, and that the schoolhouse would, probably, be greatly damaged. The Master of the Rolls said that two questions were raised—first, as to the title of the plaintiff to sue; and, secondly, whether under the various Acts a school board had the right to utilize their schoolhouse when not wanted for school purposes. These questions were far too serious to decide on an interlocutory application. The evidence as to injury was far too problematical for him to act upon. It was only an apprehended damage which might never, and he hoped would not, occur. But even if there were any damage done to the structure, the members of the school board would be liable personally if they had been parties to an illegal user of the school, and, in the next place, the persons hiring the school would be responsible; and it would only be in case of the inability of all these persons to pay for the damage that the burden would fall on the rates.

Sec. 35 of the Small Holdings and Allotments Act, 1908, provides as follows with regard to the use of rooms in schools receiving Parliamentary grants *in connection with the question of allotments*:—"Any room in a school receiving a grant out of moneys provided by Parliament may, except while the room is being used for education purposes, be used free of charge for the purposes of this part of this Act, by the county council, or, with the consent of any two managers, for the purpose of holding public meetings to discuss any question relating to allotments under this Act, but any damage done to the room and any expense incurred by the persons having control over the room on account of its being so used shall be paid by the county council or the persons calling the meeting. Nothing in this section shall give any right to hold a public meeting in a schoolroom (*a*) unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation to the council of a borough urban district, or parish under this part of this Act, has been given, in the case of a school provided by the Local Education Authority, to the clerk of the board, and in any other case to one of the managers of

the school; or (*b*) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith, after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting. If the persons calling the meeting fail to obtain the use of a schoolroom under this section, they may appeal to the Small Holdings and Allotments committee under this Act [*i.e.* the standing committee appointed by the county council with reference to allotments], and the committee shall forthwith decide the appeal and make such order respecting the use of the room as seems just."

As regards the use of schoolrooms in public elementary schools in a rural parish, *i.e.* in a parish in the district of a rural district council, by parochial electors and parish councils, sec. 4, of the Local Government Act, 1894, provides as follows:—

"4.—(1.) In any rural parish in which there is no suitable public room vested in the parish council or in the chairman of a parish meeting and the overseers which can be used free of charge for the purposes in this section mentioned, the parochial electors and the parish council shall be entitled to use, free of charge, at all reasonable times, and after reasonable notice, for the purpose of—

(*a*) the parish meeting or any meeting of the parish council; or

(*b*) any inquiry for parochial purposes by the Local Government Board or any other Government department or local authority; or

(*c*) holding meetings convened by the chairman of the parish meeting or by the parish council, or if as to allotments in the manner prescribed by the [Small Holdings and Allotments Act, 1908], or otherwise as the Local Government Board may by rule prescribe, to discuss any question relating to allotments, under the [Small Holdings and Allotments Act, 1908], or under this Act; or

(*d*) the candidature of any person for the district council or the parish council; or

(*e*) any committee or officer appointed, either by the parish meeting or council or by a county or district council to administer public funds within or for the purposes of the parish,

any suitable room in the schoolhouse of any public elementary school receiving a grant out of moneys provided by Parliament, and any suitable room the expense of maintaining which is payable out of any local rate:

"Provided that this enactment shall not authorise the use of any room used as part of a private dwelling-house, nor authorise any interference with the school hours of an elementary day or evening school, nor, in the case of a room used for the administration of justice or police, with the hours during which it is used for these purposes.

"(2.) If, by reason of the use of the room for any of the said purposes, any expense is incurred by the persons having control over the room, or any damage is done to the room or to the building of which the room is part of its appurtenances, or the furniture of the room or the apparatus for instruction, the expense or damage shall be defrayed as part of the expenses of the parish meeting or parish council or inquiry as the case may be; but when the meeting is called for the purpose of the candidature or any person, such expense or damage shall be reimbursed to the parish meeting or the parish council by the persons by whom or on whose behalf the meeting is convened.

"(3.) If any question arises under this section as to what is reasonable or suitable, it may be determined, in the case of a schoolhouse, by the Board of Education, in the case of a room used for the administration of justice or police, by a Secretary of State, and in any other case by the Local Government Board" (now the Minister of Health).

It will be seen that in the case of a schoolhouse the duty is imposed upon the Board of Education of settling any question arising under the section as to what is "reasonable" or "suitable," that is to say,—whether (1) the *time* for which the use of a room is required, and (2) the *notice* given of intention to use it, is *reasonable*; and whether the particular room, the use of which is required, is *suitable* for the purpose in view.

With respect to what is *reasonable time*, the Education Department in a circular letter dated the 30th November, 1894, stated:—"It is expressly declared by the proviso appended to sub-section (1) that nothing shall authorise any interference with the school hours of an elementary day or evening school. The first use of a schoolroom is for education, and in requiring the use of a room for any of the purposes enumerated in the section, especial care should be taken to select a time which will cause no inconvenience, or the very least possible, to the persons responsible for the due conduct of the day or evening school. The same care should be taken in cases where classes are conducted at fixed times in the schoolroom in connection with the technical education committees of county councils. In deciding what is 'reasonable time,' the Department, if appealed to for a decision, will be largely influenced by the consideration whether in any particular case efforts have been made to avoid unnecessary difficulty and friction. On the one hand the parish council and parochial electors should do all that is possible to avoid asking to have the use of a room at a time when it is known to be really required for other purposes. On the other hand the persons having control over the room will be acting for the convenience of the parish, if they will take care to make known at what times they require the room for their own use and at what times it will be ordinarily available for use by the parish council or parochial electors if so required under sec. 4."

With respect to what is *reasonable notice*, the Education Department stated:—"They regarded the question as relating principally to the length of time intervening between the receipt of the notice by the persons having the right to dispose of the school, and the date for which the use of the school is required. The Department considered that, except as regards some meetings of parish councils, the notice should be served in no case less than seven clear days before the date named, and that in most cases longer notice, as a rule not less than fourteen days' notice, should be given. It will be observed that not less than seven clear days' notice is required by Sch. I., Part I., Rule 2, of the Local Government Act, 1894, before any parish meeting can be held. As regards some meetings of parish councils, a shorter notice may suffice. By Sch. I., Part II., Rule 5, of the Act, notice of a meeting of a parish council must be given at least three clear days beforehand. It is probable that, on most occasions, the parish council will only require for its meetings a classroom, if there is one attached to the school, and in any case the preparation of a room for the limited number of persons who will be members of the parish council will not cause much inconvenience. The Department, therefore, thought that three clear days' notice will be ordinarily sufficient for a special parish council meeting, but longer notice should, as a general rule, be given. As regards the four regular statutory meetings of the parish council, including the 'annual meeting,' an endeavour should be made to fix the dates at the beginning of each year, and to give formal notice of them to the school managers, so soon as the dates are fixed. In the

case of each of these regular meetings fourteen clear days' notice should be given. Notices will be considered to run, in the case of (board schools), from the service of a properly addressed notice at the regular place of business, or residence, of the chairman or clerk of the (school board), and in the case of schools not provided by (school boards), from the service of a notice addressed to the school managers, at the schools in which the room is required. Arrangements should, of course, be made by the persons having the disposal of the schools for the immediate transmission to the proper quarter of any such notice. Unless notice is served as above indicated, the Department will not hold it to be reasonable notice under the section."

As regards the question what is a *suitable room*, the Education Department stated:—"They do not apprehend that any serious difficulty is likely to arise as to the suitability of the room, since it is specially declared at the end of sub-sec. (1) that the use of any room used as part of a private dwelling-house is not authorised by the section. Any questions as to suitability will, therefore, be confined to demands to use one room or another in the school proper, exclusive of the teacher's residence."

With reference to the use of a room under sec. 4 (1) (*d*) for the candidature of any person for the district council or the parish council, the Act provides that the room can be used by (*a*) the parish council; and (*b*) the parochial electors. The Education Department were advised by the Law Officers of the Crown with regard to such use by the parochial electors that the notice to be given to the persons having control over the room should proceed from the parochial electors and not from the candidate, and that the right to use the room is not a right of the candidate, but a right of the electors or the council. The Law Officers further advised that the expression "parochial electors"* means, not any section or majority of such electors, but the body as a whole, that is to say, acting as a parish meeting, and that the only way for the parochial electors to demand the use of the room is by notice given pursuant to a resolution at a parish meeting.

Rating of Schools.

Schools provided by school boards were held to be liable to assessment to the poor rate and other local rates. In *R.* v. *West Bromwich School Board* (L. R. 13 Q. B. D. 929; 53 L. J. M. C. 153; 52 L. T. 164; 32 W. R. 866), the question was raised as to the assessment of a board school, and in the Court of Appeal it was held (affirming the judgment of Coleridge, C. J., Stephen and Matthew, JJ.), that the decision of the House of Lords in *Jones* v. *Mersey Docks and Harbour Board*, and *Mersey Docks and Harbour Board* v. *Cameron* (35 L. J., N. S., M. C. 1; 12 L. T., N. S., 643; 11 Jur., N. S., 746), to the effect that all premises of any value and capable of occupation are rateable, applied, there being nothing in the statute to confer any exemption from assessment in the case of board schools.

There is no exemption from rating in the case of schools provided by a Local Education Authority.

The principle on which a school which had been provided by a school board should be rated was discussed in the *The Overseers of the Poor of Chorlton-upon-Medlock* v. *The Guardians of the Chorlton Union and the Overseers of Ardwick* (51 L. J., N. S., 458; 47 L. T., N. S., 96). In that case it appeared that the school board for Manchester purchased 3630 square yards of land for £2234, and erected thereon school buildings at a cost of £8945. The money required was obtained upon loan from the Public Works Loan Commissioners, at the rate of 3½ per cent. per annum interest. The buildings accommo-

* By Sch. VI. (2) of the Representation of the People Act, 1918, "local government electors" is substituted for "parochial electors."

dated 1300 scholars at the standard of eight square feet per child. The maximum fee per scholar chargeable by the school board was ninepence per week The fees actually charged were—senior department, 4*d.* per week; junior department, 3*d.* per week; infants' department, 2*d.* per week. The average annual cost of repairs, insurance, &c., was £46. Any loss arising in the occupation and carrying on of the schools was made up by a charge upon the borough rate, and equally distributed according to rateable value over all the townships, within the city. The school board accounts for the year 1881, in respect of these schools, showed—income, £1469; expenditure, £1476; loss made up by rate, £7. Profit in a commercial sense was impossible. The Recorder of Manchester having held on an appeal that the restricted profits of the occupier must determine the amount of the rateable value, the assessment committee, in a new valuation list, entered the school premises at a nominal value. Four modes of estimating the rateable value were suggested for the consideration of the Court:—(1.) The annual interest actually paid on the money borrowed and expended in the purchase or erection. (2.) The annual rent which a contractor would require if he erected the premises as they stood for the purposes for which they were used. (3.) The amount of rent which a tenant unfettered as to uses, and unrestricted as to charges, would give if the premises were in the market; and (4.) The annual profit which the school board make or can make. The Court held that the third alternative indicated the principle upon which the property was to be assessed, and that the rateable value was to be based on the amount of rent which it was estimated that a tenant unfettered as to uses and unfettered as to charges would give, if the premises were in the market.

In the subsequent case of *The London School Board*, appellants, v. *The Assessment Committee of St. Leonard's, Shoreditch*, respondents (L. R. 17 Q. B. D. 738; 55 L. J. M. C. 33, 169; 55 L. T. 384; 34 W. R. 583), the question as to the principle on which a school provided by a school board should be assessed was again raised. The school was assessed at £1150 rateable value. The assessment was arrived at by calculating the annual value of the land at £4 per cent. on its original cost, and the annual value of the buildings at £5 per cent. on their estimated cost. It was proved before the Court of Assessment Sessions, that the price paid for the land and buildings was fair and reasonable, and that there had been no extravagance or unnecessary outlay, but profit in a commercial sense could not be made by the school board as tenants of the schools, and that if the schools were then in the market to be let to a tenant as schools subject to the restrictions imposed by the Education Department acting under their statutory powers a tenant could not be found who would be willing to take them. The Court of General Assessment Sessions, being of opinion that the school board ought not to be excluded from the number of hypothetical tenants who might be willing to rent the premises, decided in favour of the respondents, but reduced the rateable value to £1100. The Divisional Court (Cave and Wills, J J.) decided in favour of the respondents, affirming the Order of Sessions. The Court of Appeal affirmed the decision of the Divisional Court, holding that in assessing the school premises the school board ought to be considered as a possible tenant, and that the gross and rateable values should be calculated on the rent which any tenant, including the school board, might reasonably be expected to pay for the premises for use as a school.

In *The School Board for London* v. *The Assessment Committee of the Wandsworth and Clapham Union* (16 T. L. R. 137), which came before the Queen's Bench Division in January, 1900, on a case stated by Justices of London sitting in Quarter Sessions, it appeared that a

school erected by the school board was included in a supplemental valuation list for the parish of Clapham, at a gross value of £1074 and a rateable value of £895. The gross value was arrived at by adding 4 per cent. on the sum given by the board as the value of the land on which the school was built to 5 per cent. on the sum given by the board as the capital value of the buildings. The Court of Quarter Sessions confirmed the assessment. It was found by the case that the buildings were more suitable for educational purposes than for any other, and that though they might be occupied for purposes other than those of a school they would not be so convenient for any such purposes without alterations, but that if the buildings were vacant, a tenant or tenants could be found to give on an annual letting a rent sufficient to support the assessment. The case further stated that the school board had borrowed the money for purchasing the land which formed the site of the school and for building the school at the rate of £2 13s. per cent. It was argued for the school board that the proper principle of assessment was to take as the gross value the rate per cent. on the capital value of the land and buildings at which the school board would be able to borrow money for the purpose of purchasing such land and erecting such buildings. In the present case that rate per cent. would be £2. 13s., not £4 per cent. or £5 per cent, which the assessment committee had adopted. The Court (Grantham and Channell, J J.) dismissed the appeal. Mr. Justice Grantham said : "It might just as well be said that if a person interested in education were to lend money for a school to the school board at 1 per cent., then the gross value of such a school would be arrived at by taking 1 per cent. of the capital value, or that if money were lent for the purpose free of interest altogether, then the school should be valued at nothing at all."

In a case where a school board claimed that they were not liable to assessment to the income tax in respect of their offices on the ground that rule 6* in sec. 61 of the Income Tax Act, 1842, provides that allowance shall be made for the duties charged on any public school in respect of the offices belonging to such school, the Board of Inland Revenue stated that it appeared that the building occupied and used as offices by the school board was not in any way connected with or attached to any of the board schools of the district for the use of the scholars, and that under these circumstances in the opinion of the Board of Inland Revenue the premises were not of the character described by the word "offices" in the Act referred to, and that the school board were not entitled to the exemption claimed.

It is to be observed that there is an exemption from rating in the case of public elementary schools not provided by a Local Education Authority. The Voluntary Schools Act, 1897 (60 Vict., c. 5, p. 107), provides that "no person shall be assessed or rated to or for any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof."

In *Trustees of the Jews Deaf and Dumb Home, Wandsworth* v. *Wandsworth and Clapham Union Assessment Committee*, 65 J. P. 137, which came before the County of London Quarter Sessions in February, 1901, the Trustees claimed that under sec. 3 of the Voluntary Schools Act, 1897, they were only liable to be assessed in respect of so much of the premises occupied as a Deaf and Dumb Home as were not used exclusively or mainly for the purposes of schoolrooms, offices, or play-

* Now replaced by rule 6, Sch. A., Income Tax Act, 1918.

grounds. The income of the institution was partly from voluntary subscriptions and donations. The trustees also received contributions from the London School Board and other school boards and a grant from the Board of Education under the Elementary Education (Blind and Deaf Children) Act, 1893, in respect of the reception, maintenance, and education by them of children sent to the home under that Act. The home was certified for the education, boarding, and lodging of 54 deaf children of both sexes, and for the education of 20 of such children as day pupils. All the children in the home, except 3, were sent by school boards. The appeal of the trustees was dismissed.

There is no exemption from liability to assessment in the case of Certified Industrial Schools (*R.* v. *West Derby*, 44 L. J. M. C. 98 ; 32 L. T., N. S., 400 ; *County of Durham* v. *Chester le Street Assessment Committee*, 63 L. T. 461), or in the case of Reformatory Schools (*Tunnicliffe* v. *Overseers of Birkdale*, L. R. 20 Q. B. D. 450 ; 57 L. J. M. C. 109 ; 59 L. T., N. S., 190 ; 36 W. R. 360.)

As to the rating of Sunday and ragged schools, see 32 & 33 Vict., c. 40, and *Bell* v. *Crane* (L. R. 8 Q. B. 481 ; 42 L. J. M. C. 122).

Private Street Expenses.

With regard to private street expenses under sec. 150 of the Public Health Act, 1875, where a school abuts on a highway not repairable by the inhabitants at large, it was held by Mr. Justice Kekewich, in *Hornsey District Council* v. *Smith* ([1896] 2 Ch. 254 ; 65 L. J. Ch. 579 ; 74 L. T. 415 ; 44 W. R. 96) that the trustees of school premises erected on glebe land which was conveyed to them under sec. 6 of the School Sites Act, 1841, to be applied as a site for a school for poor persons of the parish and for no other purpose whatever, are "owners" within the meaning of sec. 4 of the Public Health Act, 1875 ; that when the trustees had made default in payment of the amount due to a district council in respect of private street paving works, they were liable under sec. 257 of the Act to a declaration by the Court that the amount so due from the trustees, together with interest, was a charge on the land and school buildings, and that the amount might be raised by sale or mortgage of the premises free from incumbrances and the trusts of the school. The trustees appealed against this judgment, and the Court of Appeal (Lindley, A. L. Smith, and Rigby, L. JJ.) confirmed the decision of Mr. Justice Kekewich as regards the district council having a charge upon the premises, but held that the order for sale must be set aside on the ground that as long as the premises remained a site for the school and were used as such, the Court by ordering a sale would be acting in direct contravention of the special legislation of 1841. It was at the same time stated that the district council had a remedy against the trustees under the Public Health Act, 1875, but that the time for the exercise of this remedy had in this case expired ([1897] 1 Ch. D. 865 ; 45 W. R. 231).

Compulsory Purchase of Sites.—Regulations as to the Purchase of Land compulsorily.

20. With respect to the purchase of land by school boards for the purposes of this Act the following provisions shall have effect (that is to say) :

(1.) The Lands Clauses Consolidation Act, 1845, and the Acts amending the same, shall be incorporated with this Act, except the provisions relating to access to the specal Act ; and in construing those

Acts for the purposes of this section, the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the school board, and land shall be construed to include any right over land :

(2.) . . . .

The School Sites Acts [as defined in the fourth schedule to this Act] shall apply in the same manner as if the school board were trustees or managers of a school within the meaning of those Acts, and land may be acquired under any of the Acts mentioned in this section, or partly under one and partly under another Act.

Note 20.—(1) As to proposals for the erection of new schools or the enlargement of schools by Local Education Authorities, appeals against such proposals and the decision of the Board of Education thereon, see secs. 8 and 9 of the Education Act, 1902, pp. 157-8.

The Lands Clauses Consolidation Act, 1845, and amending Acts are the 8 Vict., c. 18 ; 23 & 24 Vict., c. 106 ; 32 & 33 Vict., c. 18 ; and 46 & 47 Vict., c. 15. The section only applies to lands required by Local Education Authorities. Sec. 21, however, contains provisions with regard to the purchase of lands required for a public elementary school not provided by the Local Education Authority.

The provisions of subsecs. 2 to 8 of sec. 20 were repealed by sec. 51 and Sch. II. of the Education Act, 1918, and other provisions for the acquisition of land compulsorily by Local Education Authorities were enacted in sec. 34 of that Act, see p. 395.

The School Sites Acts referred to are the 4 & 5 Vict., c. 38 ; 7 & 8 Vict., c. 37 ; 12 & 13 Vict., c. 49 ; 14 & 15 Vict., c. 24. These several Acts will be found in the Appendix, p. 527.

Purchase of Land by Managers of Public Elementary School.

21. For the purpose of the purchase by the managers of any public elementary school of a schoolhouse for such school, or a site for the same, "the Lands Clauses Consolidation Act, 1845," and the Acts amending the same (except so much as relates to the purchase of land otherwise than by agreement), shall be incorporated with this Act ; and in construing those Acts for the purposes of this section, the special Act shall be construed to mean this Act ; and the promoters of the undertaking shall be construed to mean such managers, and land shall be construed to include any right over land. (1)

The conveyance of any land so purchased may be in the form prescribed by the School Sites Acts, or any of them, with this modification, that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever. (2)

Land may be acquired under the Acts incorporated with this section, or under the School Sites Acts, or any of them, or partly under one and partly under another Act.

Any persons desirous of establishing a public elementary school (3) shall be deemed to be managers for the purpose of this section if they obtain the approval of the Education Department to the establishment of such school.

Note 21.—(1) For definition of the term "managers," see sec. 3.

As to the new provisions with regard to the purchase of land otherwise than by agreement, see sec. 34, Education Act, 1918, p. 395.

With regard to the provision of new schools or the enlargement of schools, see secs. 8 and 9 of the Education Act, 1902, pp. 157-8.

(2) The School Sites Acts will be found in the Appendix, p. 527.

(3) As to the term "public elementary school," see sec. 7 and notes thereon, p 6.

Sale or Lease of Schoolhouse.

22. The provisions of the Charitable Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of lands belonging to any charity, shall extend to the sale, leasing, and exchange of the whole or any part of any land or schoolhouse belonging to a school board which may not be required by such board, with this modification, that the Education Department shall, for the purposes of this section, be deemed to be substituted in those Acts for the Charity Commissioners.

Note 22.—The Local Education Authority are the successors of the school board, and a school provided by a school board is to be deemed to be provided by the Local Education Authority.

The Charitable Trusts Acts, 1853 to 1869, are the 16 & 17 Vict., c. 137; 18 & 19 Vict., c. 124; 23 & 24 Vict., c. 136; 25 & 26 Vict., c. 112; and 32 & 33 Vict., c. 110. See also sec. 78 and 50 & 51 Vict., c. 49.

See also sec. 2 (2) of the Board of Education Act, 1899, p. 110, as to the exercise by the Board of Education of other powers of the Charity Commissioners under the Charitable Trusts Acts. See also secs. 45 and 46 of the Education Act, 1918, p. 423.

Managers may transfer School to School Board.

23. The managers of any elementary school in the district of a school board may, in manner provided by this Act, make an arrangement with the school board for transferring their school to such school board, and the school board may assent to such arrangement. (1)

An arrangement under this section may be made by the managers by a resolution or other act as follows (that is to say):

(1.) Where there is any instrument declaring the trusts of the school, and such instrument provides any manner in which, or any assent with which, a resolution or act binding the managers is to be passed or

done, then in accordance with the provisions of such instrument :

(2.) Where there is no such instrument, or such instrument contains no such provisions, then in the manner and with the assent, if any, in and with which it may be shown to the Education Department to have been usual for a resolution or act binding such managers to be be passed or done :

(3.) If no manner or assent can be shown to have been usual, then by a resolution passed by a majority of not less than two-thirds of those members of their body who are present at a meeting of the body summoned for the purpose, and vote on the question, and with the assent of any other person whose assent under the circumstances appears to the Education Department to be requisite :

And in every case such arrangement shall be made only—

(1.) With the consent of the Education Department ; and,

(2.) If there are annual subscribers to such school, with the consent of a majority, not being less than two-thirds in number, of those of the annual subscribers who are present at a meeting duly summoned for the purpose, and vote on the question.

Provided that where there is any instrument declaring the trusts of the school, and such instrument contains any provision for the alienation of the school by any persons or in any manner or subject to any consent, any arrangement under this section shall be made by the persons in the manner and with the consent so provided.

Where it appears to the Education Department that there is any trustee of the school who is not a manager, they shall cause the managers to serve on such trustee, if his name and address are known, such notice as the Education Department think sufficient ; and the Education Department shall consider and have due regard to any objections and representations he may make respecting the proposed transfer. (2)

The Education Department shall consider and have due regard to any objections and representations respecting the proposed transfer which may be made by any person who has contributed to the establishment of such school. (3)

After the expiration of six months from the date of transfer the consent of the Education Department shall be conclusive evidence that the arrangement has been made in conformity with this section.

An arrangement under this section may provide for the absolute conveyance to the school board of all the interest in the schoolhouse possessed by the managers or by any person who is trustee for them or for the school, or for the

lease of the same, with or without any restrictions, and either at a nominal rent or otherwise, to the school board, or for the use by the school board of the schoolhouse during part of the week, and for the use of the same by the managers or some other person during the remainder of the week, or for any arrangement that may be agreed on. The arrangement may also provide for the transfer or application of any endowment belonging to the school, or for the school board undertaking to discharge any debt charged on the school not exceeding the value of the interest in the schoolhouse or endowment transferred to them. (4)

When an arrangement is made under this section the managers may, whether the legal interest in the schoolhouse or endowment is vested in them or in some person as trustee for them or the school, convey to the school board all such interest in the schoolhouse and endowment as is vested in them or in such trustee, or such smaller interest as may be required under the arrangement. (4)

Nothing in this section shall authorise the managers to transfer any property which is not vested in them, or a trustee for them, or held in trust for the school ; and where any person has any right given him by the trusts of the school to use the school for any particular purpose independently of such managers, nothing in this section shall authorise any interference with such right except with the consent of such person.

Every school so transferred shall, to such extent and during such times as the school board have under such arrangement any control over the school, be deemed to be a school provided by the school board. (5)

Note 23.—(1) For definition of the term "managers," see sec. 3.

The references to a school board and school district are to be construed as references to the Local Education Authority and the area for which they act (Education Act, 1902, Sch. III. (1), p. 227).

The Board of Education have no power to compel the transfer of any school to a Local Education Authority under this section, but their consent is necessary to the terms of transfer.

For the purposes of sec. 8 of the Education Act, 1902, the transfer of a school is to be treated as the provision of a new school. The provisions of that section and of sec. 9 of the Act as to public notice of the proposal, appeal to Board of Education, &c., therefore apply (Education Act, 1902, sec. 8 (3)).

When a school has been transferred to a school board under this section, the school is to be treated as provided by the Local Education Authority (Education Act, 1902, Sch. II. (13)) so long as it has not been re-transferred under sec. 24.

The Committee of Council on Education, on the 17th July, 1871, adopted the following resolutions with reference to applications for the transfer of elementary schools under this section :—

"I. In the case of premises held under a trust, express or implied, the following rules shall be observed :

(1.) All questions relating to the title of the parties to the proposed arrangement, or affecting the subject-matter upon which it

is to operate, must be considered and settled by the legal advisers of the parties, and will not be investigated by the Education Department.

(2.) In considering whether any proposed arrangement should be approved, the Department will confine their attention to ascertaining that the terms of such arrangement are, in their opinion, proper and reasonable, and the approval expressed in any case will be limited accordingly.

(3.) As to the terms of the arrangement,—no payment of rent beyond that charged upon or reserved out of the premises by the original lease, and no other valuable consideration, except an undertaking to insure and keep the premises in repair, and to keep down or redeem charges or incumbrances on the same will in general be sanctioned.

"II. Arrangements with respect to schools which are private property must be settled by the proprietors of the premises and the school boards, under sec. 19 of the Act, and do not require the intervention of the Department."

As to the terms of arrangement which may be made under this section, see also note 4, pp. 34-5.

The School Sites Act, 1841, by sec. 14, provides that "where a portion of any parliamentary grant shall have been or shall be applied towards the erection of any school, no sale or exchange thereof shall take place without the consent of the Secretary of State for the Home Department for the time being." The question has been raised whether this provision rendered necessary the sanction of the Home Secretary to the transfer to a school board, under sec. 23 of this Act, of a school for the erection of which a contribution was received from the parliamentary grant. The transfer is clearly not a "sale or exchange" within the meaning of the School Sites Act, and therefore the sanction of the Secretary of State was not required.

(2) In *Re Burnham National School* (L. R. 17 Eq. 241; 43 L. J. Ch. 340; 29 L. T., N. S., 495), it appeared that there were but two trustees for a national school. These trustees were unable for a considerable time to agree as to the management of the school, and differences had arisen between them as to the appointment of a master, the result of which had been the closing of the school. One of the trustees was a member of the school board for the parish, and he proposed that the school should be transferred to the school board, and the school board passed a resolution applying to the trustees to make such transfer. The second trustee objected. The Charity Commissioners were then petitioned to appoint three new additional trustees, with the view, as was alleged, of securing a majority of at least two-thirds of the trustees who would transfer the school to the school board. The memorial to the Commissioners was signed by five of the members of the school board as well as others, but the intended transfer was not mentioned in the memorial, and an order was made by the Commissioners accordingly. A meeting of the trustees was afterwards convened, and a resolution for the transfer of the school was passed by a majority of four. The objecting trustee then petitioned for a discharge of the order. He alleged that the appointment of the three additional trustees would bring about a transfer of the school to the school board, and that the effect of it would be to destroy the Church of England character of the school and the trusts of the deed, as no distinctive religious teaching was allowed in a school so transferred. The petitioner impugned the authority of the Commissioners to make the order without the consent of the bishop, and also on the ground that the new trustees, one of whom was the chairman of the school board, before being appointed, were pledged to join in transferring the school

to the school board, which object was that for which the Commissioners had made the order. The Master of the Rolls (Sir G. Jessel) held that the power of the Charity Commissioners to make the order was clearly established. As to the objection to the order that even if the Commissioners had the power to appoint additional trustees generally, yet that it should not be exercised in a case where the appointment of such trustees of a Church of England school might have the effect of handing it over to a school board, he said : "I can conceive cases in which the Commissioners might be very careful in exercising their undoubted jurisdiction, but that is no reason for saying that any legislation with respect to such schools has taken away that jurisdiction. In fact a statutory provision has anticipated the objection by requiring a majority of two-thirds of the trustees to effect such a transfer. The only other objection upon public grounds is that the exercise of the power to appoint these trustees interferes with the provision contained in the 46th section of the Act of 1853. That section might in the case of a church school prevent the Court from appointing any trustee who was not a member of the Church of England. This is undoubtedly a Church of England charity, and if the objection had any foundation in fact it would certainly have been fatal to the appointment. The three gentlemen mentioned in the order are now ascertained to be all Churchmen, although at first it was thought not to be the case. The objections do not warrant me in interfering with the order of the Commissioners." The petition was accordingly dismissed with costs.

In the instructions of the Education Department as to transfers it is stated that if there is any trustee of the school who is not also a manager (whose address is known), the proposed terms of arrangement should be shown to him, and his observations thereon communicated to the Department.

(3) The Education Department in the instructions stated :—If there are any societies (such as the British and Foreign School Society, the National Society, the Wesleyan Education Committee, the Roman Catholic Poor School Committee, or any local educational body) who have contributed to the establishment of the school, the proposed terms of the arrangement should be shown to them, and their observations thereon communicated by the clerk of the school board to the Department. The view which the board and the managers take of these objections should also be communicated to the Department, who should be informed what practical reasons prevent the board and the managers from agreeing to meet any objections made by the society to the arrangement, on the ground that it involves an unnecessary departure from the terms of the original trust.

In the case of *The National Society* v. *The London School Board* (L. R. 18 Eq. 608 ; 44 L. J. Ch. 229 ; 31 L. T., N. S., 22), it appeared that the National Society made a grant of £220 in the year 1867 towards the establishment of a Church of England school, and a trust deed for the management of the school was executed, providing that the school should "always be in unison with and conducted according to the principles and in furtherance of the ends and designs of the National Society." The deed contained no power of disposing of the school site by way of alienation. At a meeting of the managing committee of the school in May, 1872, a resolution was passed that the school should be transferred to the London School Board under the provisions of this section, and it was transferred accordingly. The deed of transfer contained certain stipulations for providing religious instruction to the children at stated hours during at least two days in the week. The National Society, prior to the transfer, appealed to the Education Department and objected to the transfer, but their objections were

overruled by the Department, who gave their sanction to the arrange ment. The society thereupon filed a bill for a declaration that the provisions of the trust deed of the 25th of February, 1867, ought to be observed in the management of the school established thereunder, and that no departure from the principles of education according to which such school was established could properly be effected without the sanction of the society. Also, that the transfer of the school to the school board was illegal. For the National Society it was argued that a transfer of the school could not be made without the consent of the society, who had advanced their money on the faith of the school being carried on in accordance with the principles of the Church of England, and that even if a transfer could be effected without such consent, it could only be effected subject to the trusts declared by the trust deed. Vice-Chancellor Malins, in delivering judgment, said :— What were the circumstances under which a transfer of a school to a school board might be made ? First, there was the general power given to the managers of the school to make the transfer. Then the 23rd section of the Act required the consent of the Education Department to the transfer, and also of the majority of the annual subscribers to the school. Down to this point all the provisions of the Act had been complied with in the present case. Was it necessary to obtain any other consent ? The following provision in the section was relied on by the plaintiffs :—" Provided that where there is any instrument declaring the trusts of the school, and such instrument contains any provision for the alienation of the school by any persons or in any manner or subject to any consent, any arrangement under this section shall be made by the persons in the manner and with the consent so provided." It was said that under that proviso the consent of the National Society was necessary. The answer to that was that although there was a deed stating the trusts upon which the school was to be held, it contained no provision for alienation, and therefore the proviso was clearly inapplicable to the present case, and no further consent was required for transfer to the school board than had already been given. It was argued with great force that the managers were so inseparably connected with the National Society, the society being the principal supporters of the school, that it was most extraordinary to suppose that the Act intended to give the managers power to transfer the school without the society having a voice in the matter. But the society had a voice in the matter : they had a *locus standi* before the Education Department. In the present case they were heard, and the decision of the Department was final on the subject. The section seemed framed so as to have regard to the vested interests of all persons, for one of its provisions was, that " where any person has a right given him by the trusts of the school to use the school for any particular purpose independently of such managers, nothing in this section shall authorise any interference with such right, except with the consent of such person." This was an instance in which vested interests were protected by the Act, and he could not come to any other conclusion than that the Act did not give the National Society a veto on these transfers. There was one other point. The school having been transferred to the school board, under whom religious instruction in any particular doctrines was excluded, the deed of transfer provided that on at least two days in the week the children might be instructed in the principles on which the school was established—namely, in the principles of the Church of England. Therefore, on the whole case, he was of opinion that the bill could not be sustained.

(4) As to the terms of an arrangement which might be made under this section with a school board, the Education Department in their instructions as to transfers of schools stated as follows :—

"(*a*) The arrangement may be for a term of years, or for the entire interest which can be transferred under sec. 23. When the intended transfer is for a term of years or for a period determinable by a notice to the school board, the board should consider how they may be recouped the expense of any permanent alteration or enlargement of the premises which may be effected by them during their holding.

"(*b*) The arrangement should show clearly what premises are transferred, and that such premises are subject to the trusts which affect the school premises.

"(*c*) The board must not undertake to pay any consideration other than a strictly nominal one (say five shillings), whether such consideration consists of a price or of a rent.

"(*d*) The arrangement may provide for the discharge of any *bonâ fide* incumbrance which is secured by a charge on the school premises, provided the amount of such incumbrance does not exceed the value of the interest in the premises and endowment transferred to the board.

"(*e*) The arrangement may provide for the board keeping down the interest on any such incumbrance as that specified in paragraph (*d*), provided the annual amount of such interest does not exceed the annual value of the interest in the premises and endowment transferred to the board.

"(*f*) The arrangement must not provide for the payment by the board of any other debt, or for the keeping down by the board of the interest on any other debt.

"(*g*) The arrangement must not provide for the payment by the board of the current expense of maintaining the school during any time prior to the date of the transfer, and this date must not be earlier than the date of the consent of the Education Department to the terms of arrangement for transfer.

"(*h*) The board may undertake to pay their proper share of such outgoings as rates, taxes, ground rent, insurance, repairs, heating, lighting, and cleaning.

"(*k*) Where it is found more convenient for any reason that the trustees or managers should by the arrangement undertake in the first instance to pay for the whole of any such outgoings as are mentioned in paragraph (*h*), the following clause may be introduced into the arrangement. 'Provided always that the board shall pay in respect of their share of ([the outgoings in question] such reasonable sum, not exceeding £ per annum, as shall be actually expended by the trustees or managers thereon.' The board must not undertake to pay a *fixed* lump sum per annum, in consideration of the trustees or managers paying for the whole of, or any of, the aforesaid outgoings.

"(*l*) If the fittings, furniture, books, and apparatus of the school are private property, they should be dealt with by a distinct agreement outside of any arrangement submitted to the Education Department under sec. 23. If, however, these articles can only be dealt with by an arrangement under that section, there must be no valuable consideration given for them or for their use by the board.

"(*m*) The arrangement may provide for the trustees or managers reserving to themselves the use of the school premises during Sundays, and during other times, provided a sufficient use is transferred to the board to enable the board to carry on upon the premises a public elementary school.

"(*n*) If the use of any teacher's residence is transferred to the board at all, such residence should be excepted from any reservations in favour of the trustees or managers.

"(*o*) The use to which the trustees or managers think they may legally put the school premises during any reserved times must not be specified in the arrangement for transfer, as the Education Department do not think they should be called upon to express any opinion upon that point.

"(*p*) The arrangement must not prescribe the kind of instruction (whether religious or secular) to be given in the school. It must not contain anything as to the examination or inspection of the school, the appointment of managers or teachers, the admission of children, or the general management of the school. The school, so far as transferred to the board, must be managed in every respect as the board for the time being see fit, subject only to secs. 7 and 14 of the Elementary Education Act, 1870.

"(*q*) In cases in which a transfer of a school in receipt of annual grants takes place in the course of the school year the arrangement may provide for the managers receiving such proportion of the grant as corresponds to the number of months which have elapsed between the end of the last school year and the date of the transfer."

With reference to the transfer of an endowment to a school board, see *The School Board for London* v. *Faulconer* (L. R. 8 Ch. Div. 571; 48 L. J. Ch. 41). In that case it appeared that by the terms of a scheme approved in 1862, for appropriation of the increased revenues of a charity estate originally applicable to the relief of the poor, it was provided that the sum of £90 per annum should be paid by the trustees to the treasurer of a school association, in aid of the expenses of a school in Flint Street, Walworth, "or any other school that may be established in its stead," provided that no sum should be paid to any school which became the property of any exclusive denomination or sect, and that if the school should at any time thereafter become "materially altered in discipline, number of children or other circumstances," then the £90 should "in the discretion of the trustees," be applied for educational purposes among other schools of a similar character in the parish. In 1873 the Flint Street school was transferred by the managers to the school board, under the provisions of this section, the managers at the same time by deed assigning to the school board the endowment "so far as they lawfully could assign the same." The trustees of the charity estate refused to pay to the school board the amount of the endowment, and a declaration was claimed that the school board as transferees and managers of the school were entitled to receive out of the income of the charity the sum in question. The defendants submitted that the £90 a year was not an endowment which the managers were enabled by the statute to transfer; that the school had ceased to be a local school, and was now one of the general schools of the metropolis, and that the £90 a year was otherwise required for the benefit of the poor of the parish, and ought to be so applied. It was further contended that the payment to the school board would give to the poor inhabitants no greater advantage than they would have if no such payment were made; that the payment would go into the general funds of the board, that no diminution would be made in the school fees, and that no diminution to the parish would accrue except a small decrease in the general rates, their proportion of which would amount to about 27*s.* a year. For the plaintiffs it was proved that the character of the school since the transfer remained unaltered, except that girls were admitted as well as boys, that the numbers had somewhat increased, and that the efficiency of the school was improved. It was further stated that the endowment would not be allowed to go into the general funds of the school board, but would be applied for the benefit of the particular school. A declaration as claimed was ordered.

In *Gurney & Others* v. *West Ham School Board*, which came before Chitty, J., in March, 1891, it appeared that the testator bequeathed to the trustees for the time being of the British School for boys at S——, for the use of the school an annuity of £100, to be payable so long as not less than eighty boys were educated in the school, and so long as the school was "carried on under the system of the Holy Scriptures being well taught therein without the peculiarities of any particular sect of professing Christians, and without the teaching of the catechism of the national religious establishment of England." Otherwise the annuity was to cease. There was a similar bequest to the trustees for the time being of the British School for Girls at S——, on like conditions. The schools referred to were, under this section, transferred to the school board of the district, and the arrangement included the transfer of the benefit of the annuities. The testator's trustees asked for a declaration that the annuities ceased to be payable under the will by reason of the schools having been transferred to the school board, and the consequent or possible change in the management of the schools in respect of religious instruction. From the evidence it appeared that the conditions as to the number of children attending the schools had been fulfilled, and that there had been no change in the nature of the religious instruction. It was held that the annuities were still payable, the conditions of the bequest not having been infringed.

In *The Llanbadarnfawr School Board* v. *the Official Trustees of Charitable Trusts* ([1901] 1 Q. B. 430; 70 L. J. K. B. (C. A.) 307; 49 W. R. 363), the managers of a national school had under this section demised to the school board for a term of sixty years all the interests of the managers or of any one who was a trustee for them in the school buildings subject to certain reservations and the income of all endowments of the school, to hold the school buildings and to receive the income of the endowments, paying therefor to the Vicar of Llanbadarnfawr for the time being as representative or trustee of the school board a rent of £1 per annum. The agreement on which the lease was based received the assent of the Education Department. The school board until two years before the action received the income of the endowments amounting to £235. There was then a new vicar of the parish, and he declined to pay the income of the endowments to the school board, and transferred the endowments to the defendants, the Official Trustees of Charitable Trusts. The action in the case was by the school board to recover from the defendants the sums received by them as income of the endowments, and for an inquiry as to the trust funds. The Court of Appeal (A. L. Smith, M R., and Collins and Romer, L. J J.), held that the School Board were not entitled to bring the action without the consent of the Charity Commissioners under sec. 17 of the Administration of Charitable Trusts Act, 1853.

See also *Re Poplar and Blackwall Free School*, *post*, p. 74, as to application of the charity funds of a charity school transferred to a school board, and sec. 13 of the Education Act, 1902, p. 163, as to endowments of schools.

With regard to loans to school boards on account of schools *transferred for a term of years*, the Committee of Council on Education, on the 13th August, 1875, resolved as follows :—

"(1) That it is expedient to apply to arrangements for *transfer for a term of years* the principle laid down by section 24 of the Act of 1870, with respect to the repayment of loans in cases of *re-transfer* under that section.

" (2) That, with this view, the consent of the Education Department shall not be given to any arrangement for the transfer of school premises for a term of years, unless such arrangement provides that the board shall retain possession of the premises at the end of the term, until the then value of any works executed with the aid of a loan shall have been repaid to the school board :

" (3) That the amount to be repaid in each such case shall be ascertained, and certified, by a surveyor selected jointly by the school board and the managers, to whom the school will revert when it ceases to be a school provided by the board. In the event of their disagreement, the surveyor shall be appointed by the Education Department, and his expenses defrayed by the school board and managers, in such proportions as the Department shall direct."

In a case in which, having regard to this minute, the National Society urged, with respect to a transfer of a school to which the society had contributed, that a clause should be introduced into the deed of transfer providing that the school board should not execute any works in connection with the school with the aid of a loan without the written consent of the trustees under the trust deed of the school, the Education Department made the introduction of the clause suggested a condition of their consent being given to the transfer of the school to the school board.

With regard to the transfer of educational endowments to school boards, see the Education Act, 1873, sec. 13, p. 74.

(5) The Education Department, in a letter addressed to Her Majesty's inspectors of schools, and dated the 13th of January, 1874, stated with reference to this provision :—" During the time in which a school board have the control over any premises, the school which they carry on in such premises is a school provided by the school board. ' No religious catechism or religious formulary which is distinctive of any particular denomination ' can, therefore, be taught in that time, and no time-table should be approved under which the instruction given in the school so provided extends to catechisms or formularies forbidden by the Act. If, under the transfer, the trustees, or former managers, retain for any time the control of the premises, the purposes to which these premises are to be put during such time are not allowed to be stated in the arrangement for the transfer, as the Education Department have no jurisdiction in the matter. You will therefore, in the case of a school transferred to a school board, take care that the time-table is limited to the hours during which the board have control over the school premises, and that it does not refer either to any time during which the school premises are *not* under the control of the board, or to any instruction given during such time."

See also Sch. II. (13) to the Education Act, 1902, p. 222.

Re-transfer of School by School Board to Managers.

24. Where any school, or any interest therein, has been transferred by the managers thereof to the school board of any school district in pursuance of this Act, the school board of such district may, by a resolution passed as hereinafter mentioned, and with the consent of the Education Department, re-transfer such school or such interest therein to a body of managers qualified to hold the same under the trusts of the

school as they existed before such transfer to the school board, and upon such re-transfer may convey all the interest in the schoolhouse and in any endowment belonging to the school vested in the school board.

A resolution for the purpose of this section may be passed by a majority of not less than two-thirds of those members of the school board who are present at a meeting duly convened for the purpose, and vote on the question.

The Education Department shall not give their consent to any such re-transfer unless they are satisfied that any money expended upon such school out of a loan raised by the school board of such district has been or will on the completion of the re-transfer be repaid to the school board.

Every school so re-transferred shall cease to be a school provided by a school board, and shall be held upon the same trusts on which it was held before it was transferred to the school board.

Note 24.—As to definition of managers, see sec. 3.

The transfer of a public elementary school from a Local Education Authority to the managers is a transfer within the meaning of sec. 8 (3) of the Education Act, 1902, and that section and sec. 9 of that Act as to provision of new schools therefore apply.

If the school is so transferred it will cease to be a school provided by the Local Education Authority; and, if it is to be carried on as a public elementary school, the provisions of the Education Act, 1902, sec. 7, will apply, notwithstanding the trusts of the school.

As to the provision that a resolution for the purpose of the section may be passed by a majority of not less than two-thirds of those members of the school board present at the meeting and voting on the question, it is presumed that the majority prescribed will refer to the members of the Local Education Authority present at a meeting of that Authority duly convened for the purpose, and voting on the question. The provision in the Education Act, 1902, Sch. III. (3), is limited in its application.

As to school endowments, see sec. 13 of the Education Act, 1902, p. 163.

With reference to loans to school boards on account of schools transferred to them for a term of years, see minute of Education Department of 13th August, 1875 (pp.) 37-8.

Miscellaneous Powers of School Board.

Appointment of Officers.

35. A school board may appoint . . . necessary officers, including the teachers required for any school provided by such board, to hold office during the pleasure of the board, and may assign them such salaries or remuneration (if any) as they think fit, and may from time to time remove any of such officers. . . .

Two or more school boards may arrange for the appointment of the same person to be an officer to both or all such boards.

Such officers shall perform such duties as may be assigned to them by the board or boards who appoint them.

Appointment and Tenure of Office of Officers.

Note 35.—The terms as regards salary and tenure of office may be set forth in the minute of appointment. When this is done an agreement under seal which involves payment of 10*s.* for stamp duty is unnecessary.

For definition of the term "teacher," see sec. 3. Sec. 14 requires that every school provided by a Local Education Authority shall be conducted as a public elementary school, and sec. 7 (4) provides that a public elementary school shall be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant.

The teachers recognised by the Board of Education are certificated and uncertificated teachers; and teachers having their status; supplementary teachers (women approved by the inspector); teachers of domestic subjects, handicraft, gardening, &c., and those having the status of such teachers; pupil and student teachers. Lay persons alone are recognised as teachers.

With regard to the superannuation of teachers, see the Elementary School Teachers' Superannuation Act, 1898, p. 478. See also Sch. II. (19), (20) to the Education Act, 1902; and the School Teachers' (Superannuation) Act, 1918, as to superannuation allowances of officers.

Medical officers were appointed by the School Board for London and the school boards of some populous boroughs under the powers conferred by this section.

The officers appointed by a Local Education Authority will hold office during the pleasure of the Authority. A head teacher so appointed can be dismissed for non-compliance with a regulation that he should reside within a specified distance of his school. *Williams* v. *Glamorgan C.C.*, 14 L.G.R. 741.

In *Hayman* v. *Governors of Rugby School* (43 L. J. 834), with reference to the provision in the Public Schools Act, 1868, that the headmasters of the schools to which that Act applied should hold office during the pleasure of the governing body, Malins, V.C., said "It is in my opinion clear that the plaintiff and all the headmasters of the schools to which the Act applies hold their offices at the pleasure merely of the new governing body, and are consequently liable to be dismissed without notice, and without any reason being assigned." See also *R.* v. *Governors of Darlington School* (6 Q. B. 682; 14 L. J. Q. B. 687); *Re Bedford Charity* (5 Sim. 578); *Dean* v. *Bennett* (L. R. 6 Ch. 489); and *Teather* v. *Poor Law Commissioners* (19 L. J. M. C. 70). *Wright* v. *Marquis of Zetland* (97 L. T. 867). In *R.* v. *Thomas* (8 A. & E. 185), with reference to the office of town clerk, the office being held during pleasure, it was held that a resolution passed on the 25th July, rescinding a resolution passed on the 20th July, appointing a person as town clerk, was a sufficient removal from office. In *Ex parte Richards* (47 L. J. Q. B. 499), as to the office of clerk to a local board, which was held during the pleasure of the local board, a *quo warranto* was refused on the ground that if the writ could issue it would be an idle form. It might restore the late officer momentarily, but he might be turned out again.

It would appear that the fact that an office was held during the pleasure of the school board would not have precluded the board from agreeing that certain notice should be given before determining the appointment, except in the case of grave misconduct on the part of the officer, and the same will be the case when the office is held under a Local Education Authority.

By sec. 86, *post*, the provisions of sec. 17 of the School Sites Act, 1841, as to the tenure of office of the schoolmaster or schoolmistress extend to the case of any school provided by a Local Education Authority and of any master or mistress of such school in the same manner as if the Local Education Authority were trustees or managers of the school as mentioned in that Act. By sec. 17 of the Act referred to it is enacted that a schoolmaster or schoolmistress to be appointed to any school erected upon land conveyed under the powers of the Act, shall "in default of any specific engagement hold his office at the discretion of the trustees of the school." As to the first mentioned section, see cases referred to in notes on that section, p. 68.

As regards the appointment and tenure of office of teachers in schools not provided by the Local Education Authority (Sch. II. (13) to Education Act, 1902), see sec. 7 (1), (*a*), (*c*), (5), and (7) of that Act.

In *Kemp* v. *The School Board of Coddington and Flamstead* (L. G. C., April 1, 1893, p. 286), it appeared that the plaintiff, on 24th August, 1891, was arrested on a charge of having assaulted a girl, and was committed for trial on 31st August. On 3rd September the school board determined that he should be requested to resign, but he refused to do so. On the 7th September the clerk to the school board wrote to him stating that the school board had dismissed him. The plaintiff then immediately issued his writ claiming an injunction to restrain the board from removing him. On 14th September he was tried and acquitted. It was not until 8th January, 1892, that he obtained another appointment. One of the conditions of the agreement entered into with him by the school board provided that the employment should be determinable by one month's notice. The action was to recover from the school board his full salary up to 8th January, 1892, amounting to £40. Mr. Justice Wills held that the school board were at liberty to dismiss the plaintiff by giving him a month's notice; but as they did not give him this notice, the resolution dismissing him was inoperative, and he continued the headmaster of the school until 8th January, 1892, when he undertook another appointment. He was therefore entitled to judgment for the amount claimed, and the costs of the action, and also of the application for an injunction. The application for an injunction was not frivolous; the plaintiff was accused of an offence which there was much difficulty in disproving, and it was highly important to him that he should not go into the dock as having been dismissed by the school board from the office which he had held under them.

In *Re School Board of Castleford* (25 L. T., N. S., 459), the Court of Queen's Bench refused an application for a *quo warranto* against the clerk of the school board. The grounds on which the motion was made were, that notice was not sent to every member of the school board prior to the appointment being made, and that a person who was not a member of the board voted in the election. The Lord Chief Justice (Cockburn) in delivering judgment said that the office of clerk was held at the pleasure of the school board, and that if the clerk was elected against the will of the majority, the majority had it in their power to displace him. Under these circumstances, even if the writ would lie, the Court could not allow so much expense to be incurred unnecessarily.

Remuneration.

In a case in which a district auditor disallowed a portion of the amount paid by a school board to one of the officers of the board, on the ground that the salary was exorbitant and in excess of the value of the services performed by the officer, the Local Government Board

on appeal reversed the decision of the auditor. The Board stated as follows :—" By sec. 35 of the 33 & 34 Vict., c. 75, it is provided that a school board may appoint a clerk and a treasurer and other necessary officers and may assign them such salaries or remuneration, if any, as they think fit. It seems to the Board that this enactment gives the school board an absolute discretion with respect to the appointment of officers, their tenure of office, their removal from office, and their salaries ; and the Board consider, therefore, that the auditor cannot legally reduce by disallowance the amount of salary assigned to an officer which in his view may appear to be excessive."

The remuneration of the treasurer, if such an officer is appointed, may be either by salary or commission. In a case in which the district auditor disallowed in the account of the treasurer a sum charged as commission, on the ground that the only power in law of reimbursing or paying a treasurer was by salary, the Local Government Board, on an appeal, reversed the auditor's decision. If a sum were assigned to the treasurer nominally as salary, but in fact by way of payment in lieu of interest for advances made by him, the payment would seem to be illegal.

With reference to a school teacher's right to payment of salary during the school vacation, reference may be made to *Hann* v. *Plymouth Corporation* ([1910] 9 L. G. R., 61). There a teacher at the science schools had been appointed by the Education Committee at a yearly salary payable and paid monthly, and his engagement was subject to three months' notice which could be given at any time by either party. The annual session of the school closed at the end of July. Owing to staff reorganisation the teacher was asked for his resignation. He gave notice of resignation on 22nd March, 1909, to take effect on 31st August, 1909. The Education Committee on 5th April gave him three months' notice to terminate his services on July 5th. He complained of this, and the Committee agreed to substitute July 31st for July 5th. On July 31st he was paid his salary for the month. He claimed an extra month's salary on the ground that the school year was divided into three terms, that the holidays went with the terms, and that the agreement for a yearly salary contemplated that it would carry the teacher over the vacations. Held that he could not maintain the action for a month's salary.

On an appeal against a disallowance by a district auditor of a gratuity to an officer, the Local Government Board, having regard to the case *Ex parte Mellish* (8 L. T., N. S., 47), in which the Court of Queen's Bench decided that gratuities cannot be granted out of a public rate, held that the payment of the gratuity by the school board was illegal.

With reference to a proposal to entrust to head teachers in provided public elementary schools sums out of which to pay the salaries of the teachers in the schools. A proposal was submitted to the Local Government Board by a Local Education Authority in reference to the payment of teachers' salaries in provided schools in the local authority's area. The arrangement involved in the proposal was to the effect that the Local Education Authority should hand over to the head teachers the total amounts required from time to time for payment of salaries in their respective schools, and make the head teacher responsible for the payment of the other teachers in each case. In reply the Board stated that they did not themselves desire to raise any objection, but that if, as regards public elementary schools provided by a Local Education Authority, sums were entrusted to head teachers in the manner and for the purposes proposed, it appeared to the Board that those teachers

must be regarded as in the position of accounting officers, and that an account must be kept by each of them to be submitted to the district auditor at the audit. The Board suggested that in these cases (assuming the salaries to be paid monthly) schedules should be prepared, showing the sums due for teachers' salaries at the end of each month. A separate schedule should be prepared for each school or department, and be handed to the head teacher with the total amount required for the purposes of the schedule. The schedule, when completed, should contain particulars showing the name and status of the teacher, the gross amount of salary due, the nature and amount of any deduction (*e.g.*, under the Elementary School Teachers (Superannuation) Act, 1898 (61 & 62 Vict., c. 57)), the net amount of salary payable, and the teacher's acknowledgment of receipt. In the event of any difference between the sum paid to the head teacher for payment of salaries and the total sum paid by him, owing to the resignation of a teacher or other cause, an explanatory note should be added to the schedule, and the balance unpaid should be repaid to the treasurer of the Local Education Authority. The Board thought that if the schedules were properly filled up and the other conditions complied with, the schedules might be accepted at the audit as sufficient accounts of the teachers making the payments, and that the personal attendance of the head teachers accounting need not in ordinary circumstances be required. The Board, however, suggested that, in lieu of paying money to the head teacher for the purposes indicated, the Local Education Authority should consider the desirability of paying each teacher by cheque or order upon their treasurer (L. G. C., May 20th, 1916, p. 352).

Regulations of an Education Committee provided that in the case of absence of teachers through illness for more than four weeks the Committee would take into consideration the payment of salary after the expiration of the four weeks.

The married headmistress of an infant school expected to be confined in January. In the preceding September the Committee requested her to retire from her duties, in consequence of her approaching illness, and she remained away until February, when she returned to her duties, in the school. The plaintiff had been capable of performing all her duties up to Christmas, and ready and willing to do so. She had been requested to absent herself because the Committee thought it was undesirable that the elder children should observe her condition. She was confined on the 4th January. She claimed payment for the whole period of her absence, and Channell J. held that she was entitled to be paid. Pregnancy itself cannot be regarded as an illness, though if near it may be described as an approaching illness. (*Davies* v. *Ebbw Vale Urban District Council*, 77 J. P. 533 ; 9 L. G. R., 1226.)

With regard to the mode of remunerating teachers the Board of Education in Revised Instructions (1901) stated—

"The Code provides that the school must not be conducted for private profit. The practice that has been known to exist of giving the whole income, or a considerable part of it, to the head teacher, and allowing him to provide the staff and equipment required, is clearly forbidden. But now that the amount of the grant is mainly dependent on the attendance of the scholars, managers should consider whether it is wise to continue the custom of making the teachers' salaries vary with the grant. The reason formerly alleged in favour of this custom, viz., that it acted as a stimulus to vigorous exertion, no longer exists. Teachers, like other persons in steady employment, ought to know what salary they can expect." See the Elementary Education Provisional Code, 1919, Articles 28 and 52.

Income Tax Payable by Officers.

With regard to the income tax payable by husband and wife when holding the offices of schoolmaster and schoolmistress, it may be observed that the income of a married woman living with her husband is deemed to be his income, and he is responsible for rendering a statement of any profits belonging to her, and chargeable with income tax. But if the total income of a husband and wife does not exceed £500, and the commissioners of taxes are satisfied that such total joint income includes profits of the wife from any profession, trade, employment, or vocation, chargeable under Sch. D, or from any office or employment of profit chargeable under Sch. E, carried on or exercised by means of her own personal labour, and that the rest of the total income or any part thereof arises or accrues from profits of the husband unconnected with the business of the wife, a separate claim of exemption or abatement may be allowed in respect of such profits of the wife (sec. 21, Income Tax Act, 1918).

With respect to the income tax payable by a schoolmaster of a public elementary school, where his wife held the office of schoolmistress in the same school, the offices being held at a joint salary, the question was raised in *Bowers* v. *Harding* ([1891] 1 Q. B. 560; 60 L. J. Q. B. 474; 64 L. T. 201), whether the schoolmaster was entitled to make a deduction, in estimating the amount of his income liable to income tax, of the wages paid to a servant who was employed to do the work of the house and the value of her board—the employment of the servant being necessary to enable the wife to attend to her school duties. The Court held that the deduction could not be allowed.

In connection with the question whether income tax is chargeable on teachers' residences connected with voluntary schools, the Board of Inland Revenue, on the 28th June, 1902, stated as follows:—Elementary Schools fall within the exemption from income tax provided in favour of public schools by Clause 2 of No. VI. of sec. 61 of 5 & 6 Vict., c. 35*, and any teacher's residence forming part of the school buildings would be included in the exemption unless occupied by a teacher who paid rent for the same, or whose total income from all sources exceeded £160 per annum. If the teacher paid a rent for the residence to the trustees of the school, the latter, as being trustees for a charitable purpose, would be entitled to claim exemption from income tax under Clause 4 of No. VI. (*idem*). When, however, the teacher occupies the residence rent free, and his total income exceeds £160 per annum, neither he nor the trustees can claim relief from the income tax charged in respect of the residence. The trustees cannot claim relief on the ground that the total income of the trust does not exceed £160 per annum, inasmuch as the right to claim exemption from income tax on the ground of smallness of income is restricted to individuals and to bodies politic and corporate, and the teacher cannot do so because it has been judicially decided that a person who occupies a residence rent free (unless he has the power of letting it) is not entitled to include the annual value of the residence as a part of his personal income for the purpose of claiming exemption or abatement of income tax. There is no exemption in the Income Tax Acts applicable to separate residences provided rent free for teachers of elementary schools and not belonging to the public buildings of the school. Such residences would fall under the general rule of Sch. A, and would be chargeable upon the annual value quite irrespective of the amount of the teacher's personal income, unless indeed he had the power of letting the residence and of so converting his interest into money, in which

* Now replaced by No. VI. (1) c. of Sch. A to the Income Tax Act, 1918. The amount entitling to exemption is now £130: Ibid. sec. 10.

event he would be entitled to include the annual value of the house as an item of his personal income for the purpose of claiming exemption or abatement of the tax in the usual course.

In *Beaumont* v. *Bowers* ([1900] 2 Q. B. 204; 69 L. J. Q. B. 600; 48 W. R. 557; 83 L. T. 120; 64 J. P. 552), the appellant was clerk to a board of guardians and to the assessment and school attendance committees of the union, and under sec. 12 of the Poor Law Officers' Superannuation Act, 1896, contributed annually for the purposes of that Act a sum of £15 10s., which was deducted from his salary under that section. He claimed to deduct this sum from the amount on which he was assessed by virtue of the Income Tax Act, 1842, and it was held by the Court (Ridley and Darling, JJ.) that the amount so contributed under the Poor Law Officers' Superannuation Act came within the words "duties or other sums payable or chargeable by virtue of any Act of Parliament," in sec. 146* of the Income Tax Act, 1842, and that the appellant was therefore entitled to the deduction claimed. The same principle would appear to apply in the case of deductions from the salaries of teachers for superannuations under the 61 & 62 Vict., c. 57, *post*.

Expenses of Candidates for Appointment as Officers.

There were several disallowances by district auditors in the accounts of school boards of payments towards the expenses of candidates for appointments, and the Local Government Board obtained the opinion of the law officers of the Crown as to the legality of these charges. The Board, acting on that opinion, held that if the school board by advertisement notified that they would pay the expenses of persons offering themselves as candidates for offices to which the board had power to appoint, and an application was made on the faith of this notification, it would be lawful for the board to pay the expenses of the applicant; but that when there had been no such notification, the expenses could not legally be paid by them. Where the board expressly requested the attendance of a particular candidate, they might agree with him to pay his expenses, and in that case the payment by the board would be a legal one.

Miscellaneous.

The clerk of a school board, it was held, was not disqualified for the office of guardian of the poor on the ground that his salary was paid out of the poor rate within the meaning of the 5 & 6 Vict., c. 57, sec. 14; *R.* v. *Dibbin* (L. R. 15 Q. B. D. 382; 54 L. J. Q. B. 557).

The Public Bodies Corrupt Practices Act, 1889, imposes heavy penalties on any officer of a public body who corruptly solicits or, receives for himself or for any other person any gift, loan, fee, reward or advantage whatever as an inducement to or reward for or otherwise on account of any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned.

The officers of a Local Education Authority should carefully abstain from using the schools or the children in the schools for party purposes in connection with elections. They should not allow the schools to be used for canvassing or distribution of bills, and in particular the children in attendance should not be employed by them in such elections, and no influence whatever should be brought by them to bear upon the children with reference to such elections.

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* Now replaced by Sch. E, Rule 1, Income Tax Act, 1918.

With respect to the transfer of officers to the Local Education Authority and compensation for loss of office or emoluments, see Sch. II. (16) to (21) to the Education Act, 1902, p. 222.

Officer to enforce Attendance at School.

36. Every school board may, if they think fit, appoint an officer or officers to enforce any bye-laws under this Act with reference to the attendance of children at school, and to bring children who are liable under the Industrial Schools Act, 1866, to be sent to a certified industrial school before two justices in order to their being so sent, and any expenses incurred under this section may be paid out of the school fund.

[The following is sec. 36 as extended by sec. 50 of the Education Act, 1918,—]

Every Local Education Authority may, if they think fit, appoint an officer or officers, to enforce the Education Acts and any bye-laws, orders, or other instruments made thereunder with reference to the attendance of children or young persons at school.

Note 36.—As to bye-laws with reference to attendance at schools, see sec. 74.

With regard to the direction necessary to authorise the officer appointed to enforce bye-laws to commence legal proceedings in a court of summary jurisdiction, for non-attendance or irregular attendance at school, see the Education Act, 1876, sec. 38, p. 99.

The Industrial Schools Act, 1866, is repealed by sec. 134 of the Children Act, 1908.

With regard to the children who are liable to be brought before justices with a view to their being sent to a certified industrial school, see sec. 58 of the Children Act, p. 282.

In *R.* v. *Moore* (L. G. C. (1888) 987 ; 52 J. P. 375), the question was raised as to the means by which a child who is liable to be sent to a certified industrial school can be brought before the justices in order to his being so sent. The justices in this case had refused to issue a summons for the appearance of the child, on the ground that they had no jurisdiction, but suggested that if the child were brought before them they would be prepared to deal with the case. The affidavits showed that efforts had been made to take the child before the justices without success. It was held by the Court that if there was any difficulty in bringing the child before the justices, either by reason of its resisting or of other persons keeping it out of the way, the ordinary process should be followed and a summons issued. The statute says, "any person may bring before any two justices." That must mean "any person may bring" according to law "before two justices," and "according to law" must mean by summons. The justices clearly have jurisdiction to issue a summons for the purpose.

As to the payments, in the case of a child committed to a certified Industrial School, of the expenses of and incidental to the conveyance of the child to and from the school, and the sending of the child out on licence or bringing back the child on the expiration or revocation of a licence, see sec. 76 of the Children Act, 1908, and note on p. 308.

As to the school fund, see Education Act, 1902, Sch. III. (2), p. 227.

Refusal to fill up Forms and to admit Inspectors.

72. If the managers or teacher of any school refuse or neglect to fill up the form required for the said return, or refuse to allow the inspector to inspect the schoolhouse or examine any scholar, or examine the school books and registers, or make copies or extracts therefrom, such school shall not be taken into consideration among the schools giving efficient elementary education to the district.

Note 72.—For definition of the term "managers," see sec. 3.
This section referred primarily to the repealed sec. 67 which required returns to be made by school boards; but sec. 95 directs that every school board (*i.e.* every Local Education Authority) shall make such report and returns and give such information to the Education Department (now the Board of Education) as that Department may from time to time require.

ATTENDANCE AT SCHOOL.

As to Attendance of Children at School.

74. Every school board may from time to time, with the approval of the Education Department, make bye-laws for all or any of the following purposes:—(1)

(1.) Requiring the parents of children of such age, not less than five years nor more than [*fifteen years*], as may be fixed by the bye-laws, to cause such children (unless there is some reasonable excuse) to attend school: (2)

(2.) Determining the time during which children are so to attend school; provided that no such bye-laws shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs, or shall be contrary to anything contained in any Act for regulating the education of children employed in labour: (3)

(3.) . . .

(4.) Imposing penalties for the breach of any bye-laws: (5)

(5.) Revoking or altering any bye-law previously made.

Any of the following reasons shall be a reasonable excuse (7); namely,

(1.) That the child is under efficient instruction in some other manner;

(2.) That the child has been prevented from attending school by sickness or any unavoidable cause;

(3.) That there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the

nearest road, from the residence of such child, as the bye-laws may prescribe.

The school board, not less than one month before submitting any bye-law under this section for the approval of the Education Department, shall deposit a printed copy of the proposed bye-laws at their office for inspection by any ratepayer and supply a printed copy thereof gratis to any ratepayer, and shall publish a notice of such deposit. (8)

The Education Department before approving of any bye-laws shall be satisfied that such deposit has been made and notice published, and shall cause such inquiry to be made in the school district as they think requisite. (9)

Any proceeding to enforce any bye-law may be taken, and any penalty for the breach of any bye-law may be recovered, in a summary manner; but no penalty imposed for the breach of any bye-law shall exceed such amount as with the costs will amount to [*twenty shillings*] for each offence, and such bye-laws shall not come into operation until they have been sanctioned by *The Board of Education*. (10)

It shall be lawful for *The Board of Education* to sanction the said bye-laws, and thereupon the same shall have effect as if they were enacted in this Act.

All bye-laws sanctioned by *The Board of Education* under this section shall be set out in an appendix to the annual report of the Education Department. (11)

Duty to make Bye-laws.

Note 74.—(1) Under this section it was optional with a school board whether or not they would make bye-laws as to the attendance of children at school. The law in this respect was altered by sec. 2 of the Education Act, 1880, p. 101, which rendered it the duty of a school board of a district in which bye-laws were not in force at the date of the passing of the Act (26th August, 1880) to make bye-laws under this section forthwith.

The powers of a school board as regards making bye-laws as to the attendance of children at school were by the now repealed sec. 21 of the Education Act, 1876, extended to school attendance committees, whether appointed by guardians, town councils, or sanitary authorities, and from the "appointed day" the powers and duties of school boards and school attendance committees were vested in the Local Education Authority. The bye-laws in force on that day continue in force until revoked or altered by them under the powers conferred by this section. (See the note to para. 8 of Sch. II., of the Education Act, 1902, and sec. 87 of the Local Government Act, 1894, thereby applied.)

Where the Local Education Authority are a County Council, the power of making bye-laws under this section includes a power of making different bye-laws for different parts of the area of the Authority. (See Sch. III. (4) to Education Act, 1902, p. 227.)

The Education Act, 1880, sec. 2, provided that if at any time after the 31st December, 1880, it appeared to the Education Department that in any school district there were no bye-laws in force, the Education Department might either proceed as if the school board or school attendance committee, as the case might be, had made default, or

they might make bye-laws respecting the attendance of children at school in the district. Where bye-laws have been made by the Education Department under the Act referred to they have effect and are to be enforced and be subject to revocation or alteration as if they had been made by the school board or school attendance committee, and had been sanctioned in pursuance of this section. There is now no district without bye-laws.

The Board of Education issued a model form of bye-laws for adoption under this section by education authorities.

Age of Attendance.

(2) The bye-laws provided for by this section applied to children of such age, not less than five years nor more than thirteen years, as might be fixed by the bye-laws. The Education Act, 1900, enacted by sec. 6, that fourteen years shall be substituted for thirteen years in this section, and the maximum, later on, will be raised to fifteen years by sec. 8 (2) of the Education Act, 1918; consequently children between the ages of fourteen years and fifteen who previously were exempted may be brought within the operation of bye-laws.

In the case of children who are above the minimum age specified in the bye-law for exemption from attending school and are under the age of fourteen years, the provisions as to school attendance which apply are those of the Elementary Education Act, 1876, secs. 11 and 12, pp. 85 and 90, and the Education Act, 1918, sec. 8 (4), p. 359.

Under sec. 8 (1) of the Education Act, 1918, no exemption for attendance at school is to be granted to any child between the ages of five and fourteen; but that is subject to other provisions in the Act of 1918, -see p. 361.

It is provided, however, in sec. 8 (2), of the Act of 1918, that it shall be lawful for a Local Education Authority to grant exemption from the obligation to attend school to individual children between fourteen and fifteen in the circumstances specified; see p. 359.

There are exceptional provisions in the 56 & 57 Vict., c. 42, as to cases of blind and deaf children, and in the 62 & 63 Vict., c. 32, as to the cases of defective and epileptic children.

In order that the ages of children may be accurately ascertained for bye-law and other school purposes, the Education Act, 1876, by secs. 25 and 26 provides for the obtaining of certificates and returns of the births of children.

When a child attains any year of age during a school term, the child is not, for the purpose of any enactment or bye-law, deemed to have attained that year of age until the end of the term, see sec. 9 (1), Education Act, 1918, p. 363.

Duty of Parents.

As regards the term "parents," see the definition in sec. 3 of this Act. In *Hance* v. *Burnett* (45 J. P. 54), it appeared that the respondent was the mother of a child under thirteen years of age, and that after the child's birth she had married a mariner. A summons was taken out against her on the 6th of April, 1880, for not sending the child to school as required by the bye-laws. For some months previous to this date her husband had been at sea in the pursuit of his calling as a mariner. The magistrates considered that though the respondent had the actual custody of the child, yet being a married woman she could only be the agent or servant of her husband in respect of the custody and management of the child, and they dismissed the case. The Court held that the magistrates were wrong. The child was in the actual custody of the respondent, and she was therefore within the definition of the word "parent," and liable to see to the child being

sent to school. It was intimated also that it was immaterial whether the child was or was not the child of the husband. It would appear, therefore, that a mother having the actual custody of a child is liable to be proceeded against for breach of the bye-laws in not sending her child to school during the absence of her husband. See also *School Board for London* v. *Jackson*, referred to in note to sec. 12 of the Education Act, 1876, *post*, as to the liability of a parent in respect of a child who is staying temporarily with a relative in another place.

The bye-laws may require the parents of children "to cause such children to attend school" unless there is some reasonable excuse. As regards what is to be deemed a "reasonable excuse," see note 7 on p. 53. To "cause a child to attend school" means to "cause the child to receive the instruction provided in the school." When fees were payable a parent did not comply with the bye-law when he merely sent the child to the door of the school without the school fee, if he knew that without the fee the child would be refused admission. *Saunders* v. *Richardson* (L. R. 7 Q. B. D. 388; 50 L. J. M. C. 137; 45 L. T., N. S., 319; 29 W. R. 800). See also *London School Board* v. *Wright* (L. R. 12 Q. B. D. 578). In *The London School Board* v. *Wood* (L. R. 15 Q. B. D. 415; 54 L. J. M. C. 145; 54 L. T. 88), the magistrate held that the respondent, having sent his child to the school and the child having been in fact admitted into the school and received education therein, could not be convicted of wilfully omitting and neglecting to cause the child to attend school within the meaning of the bye-law. In the Queen's Bench Division, Lord Coleridge, C.J., and Grove, Denman, and Mathew, JJ., held that the magistrate was wrong, and that the respondent was liable to the penalty. Mathew, J., observed: "The object of the Act is to compel the parent to provide for the education of his child, and in my opinion he no more provided for her education by sending her to school without the fees than he would have provided for her support if he sent her to be maintained by charity."

Neither does the parent cause his child to attend school within the meaning of the bye-laws when he sends his child to a school where he is aware that admission will be refused. In *Jones* v. *Rowlands* (63 J. P. 454), it appeared that the child of the appellant Jones had for some time prior to May, 1898, attended the St. Giles, Shrewsbury, voluntary school, which was a public elementary school. In May, 1898, admission to this school was refused by the managers. The appellant had due notice of the refusal to admit the child, and he was informed at various times subsequently that the child would be refused admission. He was also informed by the school board that the Education Department had approved of the refusal by the managers of the St. Giles school to admit the child, and that he must send his child to another school, and it was mentioned to him what were the schools of the Board within two miles of his residence that would receive the child. The appellant had notwithstanding, on more than one occasion, sent the child to St. Giles' school, admission being refused—and proceedings were then instituted against him by the school board for contravening the bye-laws by not causing his child to attend school. The justices were of opinion that the appellant well knew that his child would not be received at the St. Giles' school, and that the mere offering of the child at that school was not an attendance within the meaning of the bye-laws, and they convicted the appellant. On a case stated it was held by the Queen's Bench Divisional Court (Darling and Channell, JJ.), that the justices were right, and the appeal was dismissed.

The attendance at school need not be at a public elementary school. The requirement is that the child shall attend school, and the word 'school" in the bye-laws is usually defined as meaning a "certified efficient school."

But by sec. 8 (3) of the Education Act, 1918, it is not a defence to proceedings relating to school attendance under the Education Acts or any bye-laws made thereunder that a child is attending a school or institution providing efficient elementary education unless the school or institution is open to inspection either by the Local Education Authority or by the Board of Education, and unless satisfactory registers are kept of the attendance of the scholars thereat. Moreover, it is a reasonable excuse if the child is under efficient instruction in some other manner. In *Bevan* v. *Shears* ((1911) 2 K. B. 936; 9 L. G. R. 1066), school bye-laws provided that it should be a reasonable excuse for non-attendance at a public elementary school that the child is under efficient instruction in some other manner. On the hearing of an information against a parent for contravening that bye-law by not sending his son to school, the justices found that the instruction that the child was receiving was efficient. The Court held that the justices were entitled to decide that the education was efficient, without determining that the instruction of the private teacher was as efficient as the child would have received in a public elementary school. (See now sec. 8 (3), of the Education Act, 1918, which, however, does not affect education by a private tutor.) Also see *R.* v. *Morris* cited on p. 93; *Mather* v. *Lawrence* noted under sec. 48 (2), of the Education Act, 1918, p. 427; *Rennie and Boardman*, a case of a child alleged to be defective, noted on p. 466; and *Holloway* v. *Crow* ((1911) 1 K. B. 636; 9 L. G. R. 89). In this case the question was whether the child who was kept at home to nurse her sick mother, was in beneficial employment. The Court held that it was for the Local Education Authority and not the justices to decide the question in its reference to the attendance of the child at school.

Hours of Attendance.

(3) The bye-laws may determine the time during which the children are to attend school. The bye-laws usually provide that "the time during which every child shall attend school shall be the whole time for which the school selected shall be open for the instruction of children of similar age, including the day fixed by His Majesty's inspector for his annual visit." This is, however, subject to any provisions as to partial exemption from school attendance.

The detention at school after school hours of a child attending a board school for not doing home lessons is unlawful, and renders the master so detaining a child liable to be convicted for an assault: *Hunter* v. *Johnson* (L. R. 13 Q. B. D. 225; 53 L. J. M. C. 182; 32 W. R. 857).

Withdrawal of Children: Religious Observances.

With respect to the withdrawal of children from religious observances and instruction, and the attendance of children at school on a day expressly set apart for religious observances by the religious body to which the parent belongs, see secs. 7, 14, and 76. The character of the religious instruction to be given in schools is not one of the purposes for which bye-laws may be made, and the Board of Education have declined to sanction bye-laws on this subject.

In *Marshall* v. *Graham, and Bell* v. *Same* cases were stated by justices of the West Riding of Yorkshire, before whom the appellants had been severally convicted of keeping their children away from school on Ascension Day. In both cases it was admitted that the children were sent to the service of the Church of England on May 24th, 1906, instead of to certain non-provided public elementary schools in the West Riding. In Marshall's case the child, a boy eleven and a half years of age, attended school in the afternoon, after having been at church; but in Bell's case, the child, a girl nine years of age, stayed away from school the whole day.

For the parents, the appellants, it was contended that the statute, 5 & 6. Edw. VI., c. 3, s. 1, constituted Ascension Day a day exclusively set apart for religious worship; whilst the respondent Education Authority contended that the statute was not applicable, and that the bye-laws of the West Riding made under the Education Act, 1902, should prevail, since Ascension Day was not a day "exclusively set apart for religious worship," and therefore not one on which the parent was entitled to withdraw his child.

The Court (*Lord Alverstone C.J.*, *Darling and Phillimore JJ.*) held, that, looking at the matter from a broad and common-sense point of view, and having in view what was known in 1870 and also in 1902, when the last Education Act was passed, and having regard to the canons and statutes, it was reasonable to say that Ascension Day was one of the days contemplated as being exclusively set apart for religious observance. In Bell's case the circumstance that the child did not go to school in the afternoon made no difference. These prosecutions were unnecessary and misconceived, and both parents were protected from conviction. The appeal was allowed ((1907) 2 K. B. 112; 5 L. G. R. 738).

Employment of Children.

The provision that the bye-laws shall not be contrary to anything contained in any Act for regulating the education of children employed in labour, occasioned considerable difficulty. In the case of *Bury* (App.) v. *Cherrybohn* (Resp.) (L. R. 1 Ex. D. 457), it was contended that by virtue of the bye-laws of the school board made under this section, the school board might, if they thought fit, compel children to attend school full time, notwithstanding they were working at a workshop, and attending school in conformity with the provisions of the Workshop Regulation Act, 1860; and the decision of the Court was in accordance with this view. A similar question was subsequently raised in *Mellor* (App.) v. *Denham* (Resp.) (L. R. 4 Q. B. D. 241; 48 L. J. M. C. 113; 40 L. T., N. S., 395; 27 W. R. 505). In that case the child, although not complying with the bye-laws, was regularly attending an efficient elementary school pursuant to the Factory and Workshop Act, 1878, and the Court held that the school board were not entitled to enforce their bye-laws against children between the ages of ten and thirteen years, who, although not obeying such bye-laws, were attending efficient elementary schools pursuant to and otherwise observing the conditions of the Factory and Workshop Act. In consequence of these conflicting decisions there was an appeal, in the case of *Mellor* v. *Denham*, to the Court of Appeal. The Court, however, held, that as the information which was laid in the case related to a criminal offence within the meaning of sec. 47 of the Supreme Court of Judicature Act, 1873, they had no jurisdiction to hear the appeal: *Mellor* v. *Denham* (C. A.) (L. R. 5 Q. B. D. 467; 49 L. J. M. C. 89; 42 L. T., N. S., 493).

The Board of Education in their Report for 1901-2 state: "In manufacturing districts a threatened collision between the labour provisions of the Factory Act and those contained in the bye-laws has been averted by the adoption of an attendance qualification for exemption in the case of children over thirteen."

Much of the difficulty will now be removed by the provision in sec. 14 of the Education Act, 1918, p. 376. See also secs. 13 and 16 of that Act.

The Education Act of 1880, sec. 4 (repealed), as amended by sec. 6 of the Education Act, 1900, provided that any person who took into his employ a child under the age of fourteen years, before that child had obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial

exemption of children of the like age from attendance at school, was to be deemed to take such child into his employment in contravention of the Elementary Education Act, 1876, and was liable to a penalty accordingly.

Exceptional provisions in the cases of blind and deaf children and defective and epileptic children, are contained in the 56 & 57 Vict., c. 42, and 62 & 63 Vict., c. 32, *post*. The provisions of the Factory and Workshop Act, 1901, and the Coal Mines Regulation Act, as to the school attendance of children will cease to operate when the amendment of the law in sec. 14 of the Education Act, 1918 (p. 376), takes effect.

There are special provisions in the Canal Boat Acts, 1877 and 1884, with regard to the application of bye-laws in the case of children in canal boats. The provisions on this subject will be found in the Appendix, pp. 567-9.

There are also provisions in the Prevention of Cruelty to Children Act, 1894, as to the employment of children. See the amendment to that Act, continued in sec. 13 (2) of the Education Act, 1918, p. 373.

(5) As to penalty for breach of bye-laws, see note 10.

As to forgery of certificates, see sec. 25 of the Education Act, 1873, p. 80.

Reasonable Excuse.

(7) The clause specifies certain reasons which are to be deemed a reasonable excuse for non-attendance at school.

In connection with the provision that when a child has been prevented from attending school by sickness it is a "reasonable excuse," see sec. 3 of 62 & 63 Vict., c. 32, under which the Local Education Authority may provide guides or conveyances for children who in the opinion of the Authority are, by reason of physical or mental defect, unable to attend school without guides or conveyances, p. 462.

Sec. 21 of the Education Act, 1918, provides that where a Local Education Authority for the purposes of elementary education are satisfied in the case of any children that, owing to the remoteness of their homes, or the conditions under which they are living, or other exceptional circumstances affecting the children, those children are not in a position to receive the full benefit of education by means of the ordinary provision made for the purpose by the Authority, the Authority may, with the approval of the Board of Education, make such arrangements either permanent or temporary (including the provision of board and lodging, as they may think best suited for the purpose of enabling those children to receive the benefit of efficient elementary education.

With regard to evidence as to sickness, the Local Government Board, in reply to an inquiry whether a school board were empowered to pay the cost of medical certificates as to the unfitness of children to attend school through illness, stated generally that they considered that the onus of supplying evidence of there being a reasonable excuse for the non-attendance of a child at school devolved upon the parent of the child, and if the parent obtained a medical certificate for this purpose it did not appear to the Board that the school board could legally undertake to bear the cost. If, however, through poverty or other causes the parent did not obtain a medical certificate, and it became necessary for the school board to determine whether proceedings should be instituted to enforce the child's attendance, the Board were of opinion that the cost of obtaining a certificate for the purpose of enabling the school board to arrive at a decision would be a legal charge on the rates.

The Local Government Board, in reply to an inquiry as to the duty of district poor law medical officers to furnish, free of charge, certificates as to the unfitness of children of poor parents to attend school, stated that where a medical officer is attending a person on the order of the guardians or of a relieving officer, it is his duty, under Article 205 (3) of the General Consolidated Order, to give a certificate under his hand in every case to the Guardians or the relieving officer, or the person on whom he is attending, of the sickness of such person, or other cause of his attendance, when required to do so, and that the Board were advised that under this article a parent might require a certificate of the sickness of his child when the child was attended by a district medical officer.

Now under sec. 13 of the Education (Administrative Provisions) Act, 1907 (p. 271), it is the duty of Local Education Authorities for the purposes of elementary education to provide for the medical inspection of children immediately before or at the time of, or as soon as possible after their admission to a public elementary school, and on such other occasions as the Board of Education direct, and to make such arrangements as may be sanctioned by the Board of Education for attending to the health and physical condition of the children educated in public elementary schools. In connection with this provision, see also sec. 2 (1) (*b*) (on p. 347), sec. 18 (on p. 379) and sec. 25 (on p. 385) of the Education Act, 1918. Under these enactments it is now within the power of Local Education Authorities to obtain and pay for such medical certficates as they may require with regard to the fitness, or otherwise, of children to attend school.

As regards the provision that it shall be a reasonable excuse if there is no public elementary school open that the child can attend within such distance not exceeding three miles measured according to the nearest road from the residence of the child as the bye-laws may prescribe, it will be seen from sec. 23 (1) of the Education Act, 1902, that the powers of a Local Education Authority include the provision of vehicles or the payment of reasonable travelling expenses for children attending school, whenever the Local Education Authority consider such provision or payment required by the circumstances of their district or of any part thereof.

By sec. 14 (1) of the Education (Administrative Provisions) Act, 1907, when a Local Education Authority provide suitable means of conveyance for a child between a reasonable distance of its home and a public elementary school, it shall not be a reasonable excuse for the purposes of sec. 74 of the Education Act, 1870, or sec. 11 of the Education Act, 1876, that there is no public elementary school open which such child can attend within the distance of its residence prescribed by those sections or by any bye-law made under sec. 74 of the Education Act, 1870; see. p. 272.

A County Council's School bye-laws provided that a reasonable excuse for a child's non-attending at a public elementary school should be that there was no school which the child could attend within three miles "measured according to the nearest road." It was held that the term "road" was not confined to a high road or road of a particular kind, but that it included any available route, such as a route over field paths, by which the school could be reached by the child. *Hares* v. *Curtin* (1913), 2 K. B. 328; 10 L. G. R. 753.

In *Belper School Attendance Committee* v. *Bayley* (L. R. 9 Q. B. D. 259; 51 L. J. M. C. 91), the question was raised whether there can be a "reasonable excuse," other than one of those specified in the section, which will protect the parent in the case of the non-attendance

of a child at school. In the case referred to it appeared that in proceedings before the justices a certificate under the hand of the principal teacher of the public elementary school was put in to show that from the 18th of May, 1881, to the 23rd of September, 1881, the child had made only 66 attendances out of a possible 158, but it was admitted that the certificate only showed that the child was not present at the marking of the register, that is, between 9.15 and 9.30 a.m., and between 2 and 2.30 p.m., and that there was no record of the children who came late. For the defence it was proved that the child had invariably been sent from home at such an hour as would enable him to arrive at school at the proper time, and that on two occasions only had the parent been informed, previous to the commencement of the proceedings, that the child had arrived too late to be marked on the register as attending. On both occasions the mother had corrected the child for loitering on his way to school, and it was admitted that the school fees had been paid. On this evidence the justices dismissed the complaint, and the question for the opinion of the Court was whether the justices ought to have found that for the non-attendance of the child there was not a reasonable excuse. The Court affirmed the decision of the justices. Mr. Justice Grove said: Three reasons are stated in the Act as a "reasonable excuse." But these are not all. They do not exhaust the cases. Other reasons which would be a reasonable excuse would often arise. The reasons specified are given partly as illustrative and as the reasons which are most likely to occur. Here the child was sent by the parent every day to go to school at the usual time, and only on two occasions had the parent any reason to believe that the child had not reached school at the proper hour, and on those two occasions the child was punished for loitering. If the excuse in this case was not reasonable, a parent of a child between the ages of five and thirteen would be obliged to go to school with his child daily. If a parent were in a mere perfunctory manner to put the child outside the door to go to school, and were then to set up an assumption that the child attended school, the parent might be liable for the non-attendance of the child, but this was not the case here. Mr. Justice Lopes concurred.

In *London School Board* v. *Duggan* (L. R. 13 Q. B. D. 176; 53 L. J. M. C. 104; 32 W. R. 768), proceedings were instituted against the parent of a child for not causing his child to attend school in accordance with the requirements of the bye-laws. According to the evidence the child was twelve years and seven months old. She was working in the second standard, but could read fluently, write well, and had been fairly instructed in arithmetic and grammar. The child was the eldest of the respondent's family, consisting of several children, and had been employed as nursery maid in a respectable family, and had earned 3*s.* a week (which she gave to her mother) and her food. The father was a labourer at very small wages, and if the parents had been deprived of the additional money earned by the child in question it would have been impossible for them to have provided adequate food for their other children, and the health of some of the children would probably have been seriously injured. During the period the child was absent from school it was impossible for the parents to have earned more money than they did, and they had not spent money in drink or in other unnecessary ways. The officer of the school board stated that the child's parents were sober, hardworking, respectable people, influenced only by the desire for the benefit of all the children. The magistrate held that the circumstances constituted a "reasonable excuse" for non-attendance at school. The magistrate's decision was held to be right. Stephen, J.: The child has been earning money which must have formed a necessary and considerable part of the

maintenance of the family. She had been discharging the honourable duty of helping her parents, and, for my own part, before I held that these facts did not afford a reasonable excuse for her non-attendance at school, I should require to see the very plainest words to the contrary in the Act. See now sec. 21 of the Education Act, 1918.

Verminous and Infectious Children.

One of the conditions of a grant being made to a school is that "no child shall be refused admission as a scholar on other than reasonable grounds." See also *Hope* v. *Devaney* (1914) 12 L. G. R. 1286.

In *Walker* v. *Cummings* (107 L. T., 304; 10 L. G. R. 728), the respondent was summoned for not sending his child to school, she being of school age and there being, as appellant alleged, no reasonable excuse for her non-attendance. It appeared that the child had gone to school but that the headmistress had refused her admission owing to the "verminous condition" of her head. Evidence was given that by applying a proper remedy the condition could have been cured in a week; or, if the hair had been cut short, in 24 hours. The justices thought that as the child had been refused admission they could not convict, and that such refusal was a reasonable excuse for non-attendance. The Divisional Court held that if a child was sent to school in a verminous condition by a parent who knew it and could cure it by simple means, he did not cause the child to attend school within the meaning of the school bye-law; that there was no obligation on a teacher to admit a verminous child and that the justices should have convicted the respondent.

In *Symes* v. *Brown* (109 L. T., 232; 11 L. G. R. 1171), certain children under the care of the appellant were not sent to school on the ground that certain other children at the school had been suffering from ringworm and that another child was suffering from a verminous head. In proceedings against her for failing to send the children to school she called medical evidence to shew the alleged condition of the other children at the school, but the justices refused to hear the evidence and convicted the appellant. On appeal, the Divisional Court held that the justices ought to have heard the evidence, and that the case must be remitted to them to hear it. It would appear from this decision that an infectious condition of other children at a school may be a reasonable excuse for not sending a child to that school whilst those infectious children are in attendance there.

Notice of Deposit of Bye-laws.

(8) The mode of publishing notice of the deposit is prescribed by sec. 20 of the Education Act, 1873, p. 76. The following order of the Committee of the Privy Council on Education, was made under that section on the 13th of August, 1875:—"From and after the date of the present order, the notice of deposit of bye-laws under sec. 74 of the Elementary Education Act, 1870, shall be published only by advertisement in some one or more of the newspapers circulating in the district of the board whose bye-laws are so deposited."

If the Board of Education require alterations to be made in the bye-laws submitted to them, the altered bye-laws must be deposited for the inspection of the ratepayers for not less than one month, notwithstanding that the bye-laws originally proposed were so deposited. It is therefore found convenient to submit to the Board of Education a draft of the proposed bye-laws, prior to their being deposited, with the view of ascertaining whether the Board will be prepared to sanction them. When this is done, alterations can be made without the loss of a month.

(9) The Board of Education, before approving of bye-laws, require to be furnished with a declaration of the due deposit of the bye-laws and of publication of the notice, together with a copy of the newspaper containing the advertisement.

(10) Under this section the authority may make bye-laws as to school attendance, and *impose* penalties for the breach of such bye-laws,—but no penalty *imposed* for the breach of any bye-law was to exceed such amount as, with the costs, would amount to five shillings for each offence.

By sec. 6 (2) of the Education Act, 1900, p. 121, it is provided that the maximum penalty for the breach of a bye-law requiring the attendance of a child at an elementary school shall be twenty shillings, and accordingly twenty shillings shall be substituted for five shillings in sec. 74 of the Elementary Education Act, 1870.

When the bye-laws have imposed a penalty for the breach of any bye-law, and the maximum penalty so imposed has been fixed at such amount as, with the costs, will amount to five shillings, it would appear to be necessary, if it is desired to provide for the higher penalty, that the bye-law should be altered by providing that the maximum penalty, inclusive of costs, shall be fixed at twenty shillings.

The sanction of His Majesty in Council is not now necessary before bye-laws come into operation, as sec. 6 (3) of the Education Act, 1900, provides that sec. 74 of the Elementary Education Act, 1870, shall have effect as if the sanction therein referred to were the sanction of the Board of Education instead of the sanction of His Majesty in Council.

When the penalty which the defendant is ordered to pay for breach of a bye-law does not amount to five shillings, sec. 8 of the Summary Jurisdiction Act, 1879, applies. That section provides as follows :—

"Where a fine adjudged by a conviction by a Court of Summary Jurisdiction to be paid does not exceed five shillings, then, except so far as the Court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs : and the Court, shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him. The Court may also order the fine, or any part thereof, to be paid to the informant in or towards the payment of his costs."

With reference to evidence, and other matters in proceedings for recovery of penalties under by-laws, see sec. 85 of this Act, secs. 23 and 24 of the Education Act, 1873, and secs. 38 and 50 of the Education Act, 1876. See also sec. 22 of the former Act, as to the powers of the Local Education Authority to obtain returns of the attendance of children at public elementary schools.

In *The London School Board* v. *Bridge* (*In re Murphy*), and *Morgan* v. *Haycock* (see pp. 85-87), *post*, it was held that if on the part of a parent there was such habitual neglect to provide efficient elementary education for his child as to bring the case within sec. 11 of the Education Act, 1876, the proper course was to proceed under that section, and that the Local Authority were not entitled to proceed against the parent for a breach of the bye-laws.

No legal proceedings for non-attendance or irregular attendance at school are to be commenced in a court of summary jurisdiction, by a person appointed to enforce the bye-laws, except under the directions referred to in sec. 38 of the Education Act, 1876, p. 99.

With regard to the service of summonses, the Home Secretary, in a letter dated the 19th of November, 1883, stated that he had taken the opinion of the Law Officers of the Crown on the question as to the service of summonses by constables in cases under the Elementary Education Acts, and that he was advised by them "that school

authorities have the right of insisting on the summonses being served by the police, and that if the summonses are served by the police the school authorities, as being the persons at whose instance the process is issued and served, are bound to pay the fees to constables according to the table settled by justices pursuant to statutory authority." It would not appear that there would be any objection to the service of the summonses by an officer of the Local Education Authority if the justices consent.

Collecting Penalties: Distress Warrants.

The Home Secretary in 1883 expressed the opinion that the law did not impose on the police the duty of collecting the penalties imposed on parents for neglecting to send their children to school, and stated that he was aware of no reason why it should be performed by them. It would appear, therefore, that where the police decline to collect the penalties referred to, the only course open to the Local Education Authority is for them to call upon their officers to collect the penalties where they are not at once paid on conviction.

The Secretary of State also stated that he was advised that when it was deemed expedient to enforce payment of a sum adjudged by a conviction, it devolved on a school board to apply to the Court for a distress warrant.

In *Cook* v. *Plaskett* (46 L. T., N. S., 383), which came before the Court before the passing of the Education Act, 1900 (see sec. 6 of that Act), the question was raised whether the limitation of the amount of the penalty and costs to 5*s.* applied so as to include the costs of a distress warrant. In the case referred to, Plaskett was convicted of an offence under the bye-laws, and a penalty of 3*s.* with 2*s.* costs was imposed. The penalty and costs not being paid, the magistrate was applied to to issue a distress warrant against the goods of Plaskett for a sum of 8*s.*, viz., 5*s.* being the amount of the penalty and costs above mentioned, and 3*s.* in respect of the costs of the warrant of distress. The magistrate considered that by the terms of the section he was precluded from issuing a distress warrant for more than 5*s.*, and accordingly declined to do so, but the Court (Mr. Justice Grove and Baron Huddleston) held the contrary. Mr. Justice Grove said: The statute says that no penalty imposed for the breach of any bye-laws shall exceed such sum as with the costs will amount to 5*s.* Here the penalty was 3*s.* and the costs 2*s.* The costs of the distress have nothing to do with the matter.

Member of School Board Sitting as Justice of the Peace.

In answer to an inquiry addressed to the Home Office, it was stated that though the Secretary of State had no authority to give a legal opinion in such a matter, he considered that for a member of a school board to adjudicate on a school board summons was illegal, and, if it were legal, certainly inexpedient.

There are several decisions with reference to justices, who are members of a local authority, acting in matters in which the local authority are interested, to which it may be convenient to refer.

In *R.* v. *Millege and others, Justices of Weymouth* (L. R. 4 Q. B. D. 332; 48 L. J. M. C. 139; 40 L. T., N.S., 748; 27 W. R. 659), the proceedings were under the Public Health Act, 1875, which provides that no justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority. It appeared that three members of the town council, who were justices of the borough, sat on the bench at the hearing of a summons taken out under the Public Health Act, although they had been present at the meeting at which the directions to prosecute were

given, and had been parties to the resolution on the subject. The order made by the justices was quashed on the ground that they were prosecutors, and could not therefore act as judges in the case. In the course of the argument, however, Cockburn, C. J., observed that if the justices had not taken part in determining the prosecution they would not have been disqualified.

In *R.* v. *Lee and others* (L. R. 9 Q. B. D. 394) also, where the sanitary committee of the town council, who were the local authority under the Public Health Act, 1875, passed a resolution directing the town clerk to institute a prosecution against S. for exposure for sale of meat unfit for human food, contrary to the provisions of that Act, and at the hearing of the information laid in pursuance of that resolution, S. was convicted before four justices, one of whom was a member of the sanitary committee, and had been present at the meeting at which the resolution was passed, it was held that a rule for a *certiorari* to bring up and quash the conviction must be made absolute. Field, J: Sec. 258 of the Public Health Act has not the effect of enabling a person to act as prosecutor and judge in the same matter. It would require express terms in an Act of Parliament to produce that effect. I think that the meaning of sec. 258 is clear. It was thought that there might be inconvenience in carrying out the Act owing to the difficulty in boroughs of getting justices to sit who were not members of the corporation. The legislature, therefore, went one step in the direction of removing that difficulty by enacting that the mere fact of membership should not disqualify the justice. The section, therefore, removes one ground of interest merely. There is no warrant for holding that where a justice has acted as a member by directing a prosecution for an offence under the Act, he is a sufficiently disinterested person to be able to sit as a judge at the hearing of the information.

In *R.* v. *Gibbon and another, Justices of Lancashire* (L. R. 6 Q. B. D. 168; 29 W. R. 442), the proceedings were under a local Act, which provided that the corporation should be the authority for the execution of the Act, and that no person should be disqualified or disabled to act as a justice of the peace in any matter arising under the Act by reason of his being a member of the council or any committee thereof. In that case an information was laid by the borough surveyor before an alderman of the corporation, who was an *ex officio* justice. The defendant was summoned to appear at petty sessions. The justices present at the petty sessions when the defendant appeared were not members of the corporation, but ordinary justices of the county at large. For the defendant, objection was taken that the information was invalid, as it had been laid before a member of the corporation, who was not entitled to receive it. This objection was upheld by the justices, who refused to proceed, although it was not alleged that the alderman before whom the information was laid had been present at any meeting of the town council at which the question of the proceedings had been considered. On a motion to make absolute a *mandamus* commanding the justices to hear the case, it was held by Manisty, J., that the justices were right in the course which they had adopted. The corporation being entitled to the penalty were the prosecutors, and the alderman before whom the information was laid must be taken to have acted as a judge in considering the case before granting the summons.

In a later case, *R.* v. *Handsley* (L. R. 8 Q. B. D. 383; 51 L. J. M. C. 137; 30 W. R. 368), it was held, where a section in a local Act provided that "any person shall not be disqualified from acting as a justice in any matter arising under or in relation to the Act by reason

of his being a ratepayer in the borough, or liable to any payments under the Act, or a member of the town council or any committee thereof," that it is not enough, in order to disqualify a justice from adjudicating on matters arising under the Act, to show that he is a member of the town council, and, as such, has a pecuniary interest in the result of the information or complaint, or that he is a member of the corporation charged with the duty of prosecuting the offence which he sits to adjudicate upon, but it must be established that he has such a substantial interest in the result as to make it likely that he has a real bias. In the case referred to, K., an officer of the corporation who was charged with the duty of collecting the borough rates, acting on his own direction, and without consulting the town council or any committee or member thereof, obtained a summons for the non-payment of rates from a justice who was not a member of the town council. At the hearing of the summons, one of the sitting justices was a town councillor, and, on the ground that he was thereby disqualified from adjudicating upon the matter, the justices dismissed the summons. It was held that the justice was not disqualified, and that the summons must be heard and determined.

In *R.* v. *Justices of Huntingdon* (L. R. 4 Q. B. D. 522), where members of the town council had taken an active part in discussions at meetings of the council, as to the making of an order under the Dogs Act, 1871, and were parties to the making of the order, and subsequently convicted a person for an offence under the order, the conviction was supported. See also *R.* v. *Mayor and Justices of Deal, ex parte Curling* (45 L. T., N. S., 439 ; 30 W. R. 154). In that case A. had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Royal Society for the Prevention of Cruelty to Animals. Some of the justices who heard the summons and took part in the conviction were subscribers to a branch of that society, which received subscriptions in the country, and forwarded them to the society's office in London. All prosecutions by the society were directed by the secretary or committee in London, and no subscribers had any authority over, or responsibility for, such prosecutions, and the society never accepted any part of the penalties inflicted under the Cruelty to Animals Prevention Act, 1849, secs. 2, 18, 21. It was held upon a rule for *certiorari* that there was nothing in these facts to create a real bias in the minds of the justices which could amount to a disqualifying interest.

(11) By sec. 6 (3), of the Education Act, 1900, sec. 74 of the Act of 1870, is to have effect as if the sanction therein referred to were the sanction of the Board of Education instead of the sanction of Her Majesty in Council. When bye-laws in pursuance of this section have been sanctioned, it is, under sec. 23 of the Education Act, 1876, the express duty of the Local Education Authority to enforce the bye-laws.

MISCELLANEOUS.

Application of Small Endowments.

75. Where any school or any endowment of a school was excepted from the Endowed Schools Act, 1869, on the ground that such school was at the commencement of that Act in receipt of an annual parliamentary grant, the governing body (as defined by that Act) of such school or endowment may frame and submit to the Education Department a scheme respecting such school or endowment. (1)

The Education Department may approve such scheme with or without any modifications, as they think fit.

The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under the Endowed Schools Act, 1869; and such scheme, when approved by the Education Department, shall have effect as if it were a scheme made under that Act. (2)

A certificate of the Education Department that a school was at the commencement of the Endowed Schools Act, 1869, in receipt of an annual parliamentary grant shall be conclusive evidence of that fact for all purposes.

Note 75.—(1) The object of the Endowed Schools Act, 1869, was to authorise various changes in the government, management, and studies of endowed schools, and in the application of educational endowments, with the view to promoting their greater efficiency, and carrying into effect the main designs of the founders of the schools, by putting a liberal education within the reach of children of all classes. Every school which, at the date of the passing of that Act (August 2, 1869), was in receipt of a parliamentary grant, unless it was a "grammar school" as defined by 3 & 4 Vict., c. 77, was excepted from the operation of its provisions. The schools thus excepted are now provided for by this enactment.

The Endowed Schools Act, 1873, extends the operation of this section. By sec. 3 of that Act it is provided as follows:—

"Where an endowed school, not being a grammar school defined by the Act of the session of the 3 & 4 Vict., c. 77, or a department of such a grammar school, is at the commencement of this Act" (the 1st of September, 1873) "an elementary school within the meaning of the Elementary Education Act, 1870, and the gross average annual income of the aggregate educational endowments of such school during the three years next before such commencement did not exceed one hundred pounds, in such case after the commencement of this Act . . . section seventy-five of the Elementary Education Act, 1870, shall apply to such school and the endowments thereof in like manner as if it were a school which, at the commencement of the principal Act, was in receipt of an annual parliamentary grant, and schemes may accordingly be framed, submitted, and approved under the said section with reference to such schools and endowments.

"Provided that nothing in this section shall prevent the commissioners from making, on the application of the governing body of an endowment of which part only is an educational endowment to which this section applies, a scheme dealing, in pursuance of the principal Act, with the part of such endowment applicable or applied to other charitable uses, and in such case the scheme may deal with the endowed school and endowment thereof in like manner as if this section had not been enacted.

"The governing body of every school to which this section applies may, if they think fit, charge such fees to the scholars as may from time to time be approved by the Committee of Council on Education, and shall permit the school to be inspected and the scholars therein to be examined by one of Her Majesty's Inspectors of Schools at such times and in such manner as the Committee of Council on Education may from time to time direct.

"The certificate of the Charity Commissioners for England and Wales that a school is or is not a school to which this section applies shall be conclusive evidence of the fact for the purpose of the principal Act and this section."

The "governing body," according to sec. 7 of the Endowed Schools Act, 1869, means "any body corporate, person or persons who have the right of holding, or any power of government of or management over any endowment, or, other than as master, over any endowed school, or have any power, other than as master, of appointing officers, teachers, exhibitioners, or others, either in any endowed school, or with emoluments out of any endowment."

It may be observed in connection with this section that the Army Schools Act, 1891, provides that where any scheme in force for the regulation of any endowed charity or charities, established or approved before or after the passing of that Act, includes any provision for the benefit of children who are or have been scholars in a public elementary school, an army school shall be deemed a public elementary school within the meaning of those provisions.

The expression "army school" means a school established for the purpose of affording education to children of non-commissioned officers and men of Her Majesty's regular land forces, and conducted under the authority of a Secretary of State or of the Admiralty; and a certificate of the Director-General of Military Education or of the Inspector of Naval Schools, as the case may require, is sufficient evidence that a school is an army school within the meaning of this Act.

See also sec. 2 (2) of the Board of Education Act, 1899 (p. 110), with respect to the exercise by the Board of Education of powers of the Charity Commissioners in matters which relate to education, subject to the provision that any question whether an endowment, or part of an endowment, is held for or ought to be applied to educational purposes, shall be determined by the Charity Commissioners; and sec. 13 of the Education Act, 1902, as to further powers of the Board of Education with regard to endowments.

See also sec. 45 of the Education Act, 1918 (p. 423), which gives further powers with regard to the constitution of official trustees of charitable funds relating to endowments for educational purposes.

(2) Schemes under the Endowed Schools Act may provide, in such manner as may render any educational endowment most conducive to the advancement of the education of boys and girls, or either of them, for altering and adding to any existing and making new trusts, directions, and provisions in lieu of any existing trusts, directions, and provisions which affect the endowment and education promoted thereby, including the consolidation of two or more endowments, or the division of one endowment into two or more endowments.

In *Re St. Leonard, Shoreditch, Parochial Schools* (L. R. 10 App. Cas. 304; 54 L. J. P. C. 30; 51 L. T. 305; 33 W. R. 756), it was held by the Privy Council that where the Charity Commissioners by their scheme provided that certain endowments which had theretofore been applied in carrying on the schools of a particular parish should thenceforth be applied in exhibitions for the benefit of a larger area of schools, this was within their power under sec. 9 of the Endowed Schools Act, 1869, and that that being so the way in which those powers had been exercised was not the proper subject of appeal. Further, that a charity which has no instrument of foundation or statutes or duly authorised regulations impressing upon it a denominational character does not fall within the 19th clause of the Endowed Schools Act, 1869, or the 7th clause of the Endowed Schools Act, 1873, and its trustees cannot impress upon it that character, nor is any practice for the time being as to the application of its funds sufficient evidence of there ever having been regulations in existence which prescribed it. Where a charity is

established by subscriptions, the original subscribers alone are the founders—the later benefactions are on the footing of the original foundation. If its regulations are replied upon as impressing upon it a denominational character, they must be shown to have been authorised by all the founders, and to have been issued before fifty years from their deaths.

In *Re The Free Grammar School and Hospital of Archbishop Holgate at Hemsworth, and the Grammar School at Barnsley* (L. R. 12 App. Cas. 444; 56 L. J. P. C. 52; 56 L. T. 212; 35 W. R. 418), it was held by the Privy Council that the removal of the site of a school is within the scope of the Endowed Schools Act, 1869, and the powers conferred on the commissioners by sec. 9. An annual sum temporarily applied to the purposes of the school is an endowment within the meaning of sec. 5. Sec. 19 does not relate to an endowment which has been (whatever its original foundation) subjected to a scheme providing that religious instruction in the liturgy, catechism, and articles of the Church of England shall be given, not to all boys, but to the boys of parents in that communion and the boys of other parents who do not object thereto in writing.

As to the powers of a Local Education Authority to become trustees for any educational endowment or charity for purposes connected with education, see sec. 13 of the Education Act, 1873, p. 74.

In *Re Bowen, Lloyd Phillips* v. *Davis* ((1893) 2 Ch. 491; 62 L. J. Ch. 681), it appeared that the testator, who died in 1847, by his will dated in 1846 bequeathed two sums of money to trustees upon trust to establish schools in certain parishes, and to continue the same for ever thereafter; and he declared that if at any time the Government should establish a general system of education the several trusts of the said legacies should cease and determine, and he bequeathed the said sums of money in the same manner as he had bequeathed the residue of his personal estate; and he appointed his three sisters to be his executrixes and residuary legatees. An originating summons was taken out by the personal representatives of the residuary legatees raising the question whether the Government had by the Elementary Education Act, 1870, and the Acts amending it, established a general system of education, and whether the trusts of the two sums had ceased and determined, and whether those sums had fallen into the residuary estate. It was held by Mr. Justice Stirling that the testator had made an immediate disposition in favour of charity in perpetuity, followed by a gift over of a future interest to arise upon an event which need not necessarily occur within perpetuity limits; and that the gift over consequently failed.

Inspection of Voluntary Schools by Inspector not one of Her Majesty's Inspectors.

76. Where the managers of any public elementary school not provided by a school board desire to have their school inspected or the scholars therein examined, as well in respect of religious as of other subjects, by any inspector other than one of Her Majesty's inspectors, such managers may fix a day or days not exceeding two in any one year for such inspection or examination.

The managers shall, not less than fourteen days before any day so fixed, cause public notice of the day to be given

in the school, and notice in writing of such day to be conspicuously affixed in the school.

On any such day any religious observance may be practised and any instruction in religious subjects given at any time during the meeting of the school, but any scholar who has been withdrawn by his parent from any religious observance or instruction in religious subjects shall not be required to attend the school on any such day.

Note 76.—For definition of the term "managers," see sec. 3, *ante*.

This section will only apply to schools not provided by the Local Education Authority. As to the schools which are to be deemed to be so provided, see 2 Education Act, 1902, Sch. II. (13), p. 222.

With regard to the withdrawal of children from religious instruction and observances, see sec. 7, p. 6.

Education Department may apply to Charity Commissioners under 16 *&* 17 *Vict., c.* 137, *&c.*

78. The Education Department shall, for the purposes of the Charitable Trusts Acts, 1853 to 1869, be deemed to be persons interested in any elementary school to which those Acts are applicable, and the endowment thereof.

Note 78.—The Charitable Trusts Acts are specified in the note to sec. 22, which extends the provisions of those Acts to the sale, leasing, and exchange of any land or schoolhouse belonging to a Local Education Authority, which may not be required by them.

See also sec. 2 (2) of the Board of Education Act, 1899, p. 110, as to powers of the Charity Commissioners in matters which relate to education being exercised by the Board of Education, and the provision as to endowments in sec. 13 of the Education Act, 1902.; and as to educational trusts in sec. 45 of the Education Act, 1918.

Notices may be served by Post.

81. Certificates, notices, requisitions, orders, precepts, and all documents required by this Act to be served or sent may, unless otherwise expressly provided, be served and sent by post, and till the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service or sending it shall be sufficient to prove that the letter containing the certificate, notice, requisition, order, precept or document, was prepaid and properly addressed, and put into the post.

The following is sec. 81 as extended by sec. 50 of the Education Act, 1918:—

Certificates, notices, requisitions, orders, precepts, and all documents required by the Education Acts or any regulations or bye-laws made thereunder to be served or sent may, unless otherwise expressly provided, be served and sent by post,

and, till the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service or sending it shall be sufficient to prove that the letter containing the certificate, notice, requisition, order, precept, or document was prepaid, and properly addressed, and put into the post.

Note 81.—See sec. 43 of the Act, of 1918, for provision as to the proof of the documents referred to above.

Notices to and by School Board.

82. Certificates, notices, requisitions, orders, and other documents may be served on a school board by serving the same on their clerk, or by sending the same to or delivering the same at the office of such board.

Certificates, notices, requisitions, orders, precepts, and other documents may be in writing or in print, or partly in writing and partly in print, and if requiring authentication by a school board, may be signed by their clerk.

Evidence of Orders, &c., of Education Department.

83. All orders, minutes, certificates, notices, requisitions, and documents of the Education Department, if purporting to be signed by some secretary or assistant secretary of the Education Department, shall, until the contrary is proved, be deemed to have been so signed and to have been made by the Education Department, and may be proved by the production of a copy thereof purporting to have been so signed.

The Documentary Evidence Act, 1868, shall apply to the Education Department in like manner as if the Education Department were mentioned in the first column of the schedule to that Act, and any member of the Education Department, or any secretary or assistant secretary of the Education Department, were mentioned in the second column of that schedule.

Note 83.—By the Documentary Evidence Act, 1868, *primâ facie* evidence of any order or regulation issued by the Privy Council, or by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule to the Act, may be given in all courts of justice, and in all legal proceedings, by the production—

(1) of the *London Gazette* containing a copy of the order or regulation ; or,

(2) of a copy of the order or regulation purporting to be printed by the Government printer ; or,

(3) in the case of an order or regulation issued by the Privy Council of a copy or extract purporting to be certified to be true by the clerk of the Privy Council, or by some one of the lords or others of the Privy Council, and in the case of any order or regulation issued by or under the authority of any of the

departments or officers above referred to, of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the schedule in connection with such department or officer.

No proof is to be required of the handwriting or official position of any person certifying, in pursuance of the Act, to the truth of any copy of or extract from an order or regulation.

The Board of Education Act, 1899, p. 109, by sec. 2 (1) provides that the Board of Education shall take the place of the Education Department, and that all enactments and documents shall be construed accordingly. See also the provisions in sec. 7 (2), (3), (4), of that Act as to the certifying and receiving in evidence of documents purporting to be issued by the Board.

The Documentary Evidence Act, 1882, also provides that where it is enacted that a copy of any order, regulation, &c., shall be conclusive evidence, or be evidence, or have any other effect, when purporting to be printed by the Government printer or the Queen's printer, or a printer authorised by Her Majesty, or otherwise under Her Majesty's authority, whatever may be the precise expression used, such copy shall also be conclusive evidence, or evidence, or have the said effect (as the case may be) if it purports to be printed under the superintendence or authority of His Majesty's Stationery Office.

Any person who prints any copy of any order or regulation which falsely purports to have been printed by the Government printer, or under the superintendence of His Majesty's Stationery Office, or who tenders in evidence any copy which falsely purports to have been so printed, knowing that it was not so printed, or who forges or tenders in evidence, knowing the same to have been forged, any certificate by the Act of 1868 authorised to be annexed to a copy of or any extract from any order or regulation, is guilty of felony; and on conviction is liable to penal servitude for not exceeding seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour (sec. 3).

Effect of Requisition of Education Department.

84. After the expiration of three months from the date of any order or requisition of the Education Department under this Act, such order or requisition shall be presumed to have been duly made, and to be within the powers of this Act, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

The following is sec. 84 as extended by sec. 50 of the Education Act, 1918:—

After the expiration of three months from the date of any order or requisition of the Board of Education under the Education Acts such order or requisition shall be presumed to have been duly made, and to be within the powers of the Education Acts, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

Note 84.—By sec. 2 (1) of the Board of Education Act, 1899, p. 109, the Board of Education take the place of the Education Department, and all enactments and documents are to be construed accordingly.

With regard to this section the case of *R.* v. *Justices of Flintshire* (*R.* v. *Sankey and others*) (L. R. 3 Q. B. D. 379 ; 47 L. J. M. C. 96) may be referred to. In that case the question raised was as to whether a conviction for personation at the voting on a resolution for an application for a school board could be sustained. The voting was under an order of the Education Department, which *inter alia* made certain provisions of the Ballot Act applicable so as to involve a penalty for personation. For the justices who convicted it was contended that the order was within the powers of the Education Department, and that apart from this, sec. 84 of the Education Act, 1870, precluded any objection to the legality of the order, as three months had elapsed since the date of the order. Mr. Justice Mellor said : "We should be proceeding against the recognised principles of construction if we were so to extend the powers of the Department as to make personation on the voting on a resolution for a school board an offence without a direct statutory authority. As to sec. 84, time never would pass to enlarge a jurisdiction that was not given." Mr. Justice Lush concurred. With regard to the provision in sec. 84, he said : "I think that it only applies to orders which may be irregular to a given extent. They may prescribe things which they have no right to prescribe. I cannot think that it was intended that it should validate an order (which really amounts to a legislative enactment creating a new offence) after the expiration of three months from the date of the order. It must be taken that the order in this case is a legislative provision without authority given for it by the Act, and it cannot be that this is a matter which was intended to be cured by three months elapsing without objection being taken to the order." The conviction was accordingly quashed.

Appearance of School Board.

85. A school board may appear in all legal proceedings by their clerk, or by some member of the board authorised by a resolution of the board ; and every such resolution shall appear upon the minutes of the proceedings of the board, but every such resolution shall, until the contrary is proved, be deemed in any legal proceeding to appear upon such minutes.

Note 85.—The Public Authorities Protection Act, 1893, contains provisions for the protection of persons in actions, prosecutions, or other proceedings commenced against them "for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority." The Local Education Authority has the power of the school board (p. 217).

In *Reid* v. *Blisland School Board*, an action was brought against the school board by the late schoolmaster of a school of the board for libel. It appeared that the plaintiff and his wife were employed by the school board to their satisfaction for ten years. The board having given him notice to quit their service, he pointed out that under his agreement they must specify the grounds of his dismissal. And at a subsequent meeting a resolution was read accusing the plaintiff of falsifying the attendance list, and also stating that the sewing taught was not of an efficient character. At the conclusion of the evidence for the plaintiff it was submitted for the school board that the Public Authorities Protection Act, 1893, applied, and that the action had not been commenced within six months as required by that Act. Mr. Justice Wills held that, looking to the provisions of the Act referred to, the judgment must be for the school board with costs.—(17 Times Law Rep. 626.)

For provisions as to legal proceedings, see sec. 92 of this Act, secs. 23 and 24 of the Education Act, 1873, p. 78, and secs. 37 and 38, of the Education Act, 1876, p. 99.

Tenure of Teacher and his Removal from House under secs. 17 and 18 of 4 & 5 Vict., c. 38.

86. The provisions of the School Sites Acts with respect to the tenure of the office of the schoolmaster or schoolmistress, and to the recovery of possession of any premises held over by a master or mistress who has been dismissed or ceased to hold office, shall extend to the case of any school provided by a school board, and of any master or mistress of such school, in the same manner as if the school board were the trustees or managers of the school as mentioned in those Acts.

Note 86.—The School Sites Act, 1841, which contains the provisions referred to (see secs. 17 and 18), will be found in the Appendix, p. 537.

In *Rendall* v. *Blair* (L. R. 45 Ch. D. 139; 59 L. J. Ch. 641; 38 W. R. 689), the plaintiff, a certificated teacher, had been appointed the headmaster of a national school, and had entered into possession of the schoolhouse by virtue of the appointment. The school was founded under a deed executed pursuant to the School Sites Acts, 1841 and 1844, a piece of land being conveyed upon trust to permit the premises to be used for a school and as a residence for the teacher. The deed provided that the selection, appointment, and dismissal of the school teachers should be in all respects under the control and management of the incumbent and his curate and four other persons to be nominated annually by the incumbent. The defendants, the vicar and four other persons acting as managers of the school, gave the plaintiff notice that his services at the expiration of three months would not be required. The plaintiff alleged that in consequence of certain invalid appointments some of the defendants were not managers of the school at the date of the notice of dismissal, and that if they were managers they had dismissed him improperly. He claimed an injunction to restrain the defendants from dismissing him from his office, and from electing any other person to the office, and from ejecting him from the schoolhouse occupied by him in virtue of his office. The plaintiff had not obtained under sec. 17 of the Charitable Trusts Acts, 1853, a certificate from the Charity Commissioners authorising him to bring his action, and the defendants raised the objection to his right to sue that he had not first obtained this certificate. The Court of Appeal (Bowen and Fry, L. JJ., Cotton, L. J., dissenting) held—reversing the decision of Kay, J.—that although the action might incidentally involve the consideration of the deed of trust of the Charity, it was not such an action as required the consent of the Charity Commissioners. The Court further held that even if the consent of the Charity Commissioners were necessary, it was not necessary to obtain it before the commencement of the action, and that it would not be right to dismiss the action without giving the plaintiff the opportunity of ascertaining whether the Commissioners would give their consent.

In the case of the *Itchingfield School Board* v. *Brooke*, which was heard in May, 1894, in the Queen's Bench Division before Mr. Justice Grantham and a jury, the school board sued the defendant to recover possession of a house which was attached to the office of headmaster of the school of the school board. The defendant had held the office

of master and was dismissed on a month's notice. He refused to give up possession of the house contending that he had not been properly dismissed, as the board when they gave him notice were not properly constituted. He also claimed three months' notice. The objection was that the rector of the parish, although a member of the board, had not received notice of the meeting at which the motion for the dismissal was carried, and was therefore unable to attend and take part in the proceedings. The school board considered the rector out of office at the time, as he had not, as they alleged, attended any meeting during a period of six months, and had therefore become disqualified. He had on one occasion within the period referred to gone to the school where he met the other members of the board, but this it was argued was not a meeting of the board. The jury found that the meeting with other members of the school board at the schoolroom on the occasion referred to was not a meeting of the board, that the dismissal was good, and that the month's notice was reasonable.

With respect to the appointment and tenure of office of teachers in schools not provided by a Local Education Authority, see the Education Act, 1902, sec. 7 (1) (*a*) (*c*), (5), and (7).

The cases of *Nott* v. *Williams* (48 W. R. 316), *Fisher* v. *Jackson* ([1891] 2 Ch. 84 ; 60 L. J. C. D. 482 ; 64 L. T. 782), *Lane* v. *Norman* (61 L. J. C. D. 149 ; 66 L. T. 83 ; 40 W. R. 268), and *Pottle* v. *Sharp* (65 L. J. Ch. 908 ; 75 L. T. 265), refer to the appointment or dismissal of teachers under the provisions of trust deeds. As to *Lane* v. *Norman*, see *Harries* v. *Crawfurd*, per Duke L. J. (1918), 2 Ch. 158.

Recovery of Penalties.

92. Any penalty and any money which under this Act is recoverable summarily, and all proceedings under this Act which may be taken in a summary manner, may be recovered and taken before two justices in manner directed by an Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and the Acts amending the same.

For further provisions with regard to recovery of penalties and summary proceedings, see the Education Act, 1873, secs. 23 and 24, p. 78.

Returns by School Board.

95. Every school board shall make such report and returns and give such information to the Education Department as the Department may from time to time require.

See also sec. 13 of the 62 & 63 Vict., c. 32, p. 467, as to the duty of a Local Education Authority to make returns and give information to the Board of Education respecting their proceedings under that Act.

By Art. 31 of the Elementary Education Code, 1919, the punctual supply of information and returns required by the Board is a condition of the payment of Education grants.

(II.) PARLIAMENTARY GRANT.

Parliamentary Grant to Public Elementary School only.

96. After the thirty-first day of March, one thousand eight hundred and seventy-one, no parliamentary grant shall be made to any elementary school which is not a public elementary school within the meaning of this Act.

No parliamentary grant shall be made in aid of building, enlarging, improving, or fitting up any elementary school.

For definition of "public elementary school," see sec. 7.

As to conditions of annual parliamentary grant, see sec. 97; also sec. 20, Education Act, 1876, and notes on those sections.

Conditions of Annual Parliamentary Grant.

97. The conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant shall be those contained in the minutes of the Education Department in force for the time being (1), and shall amongst other matters provide that—

(1.) Such grant shall not be made in respect of any instruction in religious subjects . . .

but such conditions shall not require that the school shall be in connection with a religious denomination, or that religious instruction shall be given in the school, and shall not give any preference or advantage to any school on the ground, that it is or is not provided by a school board. . . .

Note 97.—(1.) The conditions which are required to be fulfilled in order to obtain an annual parliamentary grant are set forth in Art. 31 of the Elementary Education Code, 1919.

It will be observed from Art. 32 of the Code that in cases where any of the conditions set forth in the Code (except such conditions as are specially imposed by Act of Parliament) are not fulfilled, the Board of Education have power, after considering all the circumstances, to pay the grant or a portion of the grant and give a warning to the managers that the grant may be withheld next year.

See also sec. 7 and with regard to schools not provided by a Local Education Authority, Education Act, 1902, sec. 7 (4), p. 140.

As to the powers of the managers of an elementary school to fulfil the conditions required to be fulfilled to obtain a parliamentary grant notwithstanding any provisions contained in any instrument regulating the trust or management of their school, see sec. 99, the Education Act, 1902; Sch. III. (7), p. 227; and the Education (Compliance with Conditions of Grants) Act, 1919, p. 443.

The parliamentary grant in lieu of the grants which were paid under the repealed provisions of this section, as amended by the Elementary Education Act, 1897, and under the Voluntary Schools Act, 1897, was provided for in sec. 10 of the Education Act, 1902. That section and sec. 2 of the Education Code (1890) Act, 1890, as to special parlia-

mentary grants, and secs. 1-4 of the Education Act, 1891, as to "fee grants," have now been repealed by the Education Act, 1918. See sec. 44 of the Act of 1918 (p. 413), which provides for an entirely new system of education grants.

Refusal of Grant to Unnecessary Schools.

98. If the managers of any school which is situate in the district of a school board acting under this Act, and is not previously in receipt of an annual parliamentary grant, whether such managers are a school board or not, apply to the Education Department for a parliamentary grant, the Education Department may, if they think that such school is unnecessary, refuse such application. (1)

The Education Department shall cause to be laid before both Houses of Parliament in every year a special report stating the cases in which they have refused a grant under this section during the preceding year, and their reasons for each such refusal. (2)

Note 98.—(1.) For definition of the term "managers," see sec. 3. See also secs. 8 and 9 of the Education Act, 1902, pp. 157-8, as to proposals to provide new public elementary schools or to enlarge such schools, and appeals to the Board of Education against such proposals. Any school built in contravention of the decision of the Board of Education on any such appeal is to be treated as unnecessary. A school for the time being recognised as a public elementary school is not, however, to be considered unnecessary if the number of scholars in average attendance, as computed by the Board of Education, is not less than thirty.

(2.) The annual report of the Board of Education gives a statement of the cases in which during the year a grant has been refused. The reason which has been usually assigned for the refusal is to the effect that there is no deficiency of accommodation in the district.

Power of Schools to take Parliamentary Grants.

99. The managers of every elementary school shall have power to fulfil the conditions required in pursuance of this Act to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision contained in any instrument regulating the trusts or management of their school, and to apply such grant accordingly.

Note 99.—As to the conditions to be fulfilled in order to obtain a parliamentary grant, see sec. 97, *ante*, and sec. 44 of the Education Act, 1918, p. 413.

This section also applies to the fulfilment of any conditions, the performance of any duties, and the exercise of any powers under the Education Act, 1902, as it applies to the fulfilment of conditions required in pursuance of this Act to be fulfilled in order to obtain a parliamentary grant (Education Act, 1902, Sch. III. (7), p. 227).

With reference to trust deeds, see also sec. 11 of the Education Act, 1902, p. 159.

REPORT.

Annual Report of Education Department.

100. The Education Department shall in every year cause to be laid before both Houses of Parliament a report of their proceedings under this Act during the preceding year.

FOURTH SCHEDULE.

SCHOOL SITES ACTS.

The following Acts may be cited together as the "School Sites Acts, 1841 to 1851."

Year and Chapter of Act.	Title of Act.	Short Title by which Acts may be cited.
4 & 5 Vict., c. 38	An Act to afford further facilities for the conveyance and endowment of sites for schools.	The School Sites Act, 1841.
7 & 8 Vict., c. 37	An Act to secure the terms on which grants are made by Her Majesty out of the parliamentary grant for the education of the poor; and to explain the Act of the fifth year of Her present Majesty, for the conveyance of sites for schools.	The School Sites Act, 1844.
12 & 13 Vict., c. 49.	An Act to extend and explain the provisions of the Acts for the granting of sites for schools.	The School Sites Act, 1849.
14 & 15 Vict., c. 24.	An Act to amend the Acts for the granting of sites for schools.	The School Sites Act, 1851.

These several Acts will be found in the Appendix, p. 527.

The Fourth Schedule is repealed by the Statute Law Revision Act, 1893, but the Short Titles Act, 1896, includes the above four Acts and also the School Sites Act, 1852, under the collective title "School Sites Acts."

ELEMENTARY EDUCATION ACT, 1873.

(36 & 37 Vict., c. 86.)

An Act to amend the Elementary Education Act (1870), *and for Other Purposes Connected Therewith.*

[*5th August*, 1873.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows :—

The following sections of this Act are the provisions which are now in force.

In connection with these sections it is to be borne in mind—

(1.) *That references in this Act to school boards and school districts are to be construed as references to Local Education Authorities and the areas for which they act* (*Education Act*, 1902, *Sch. III.* (1)) ;

(2.) *That the Local Education Authorities throughout their area have the powers and duties of a school board and school attendance committee, and school boards and school attendance committees are abolished* (*Education Act*, 1902, *sec.* 5) ;

(3.) *That a Local Education Authority may delegate to the education committee with or without any restrictions or conditions as they think fit any of their powers except the power of raising a rate or borrowing money* (*Education Act*, 1902, *sec.* 17) ; *and*

(4.) *That the Acts which are cited as the Education Acts*, 1870 *to* 1918, *are to be read as one* (*Education Act*, 1918, *sec.* 52, *p.* 437).

Preliminary.

Short Title.

1. This Act may be cited as " The Elementary Education Act, 1873 " ; and this Act and " The Elementary Education Act, 1870 " (in this Act referred to as the principal Act), may be cited together as " The Elementary Education Acts, 1870 and 1873."

See note to sec. 27 (4) of the Education Act, 1902, p. 213, as to the Elementary Education Acts, 1870 to 1900. See also note to sec. 52 of the Education Act, 1918, p. 437.

Construction of Act.

2. This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to include this Act.

Power of School Board to accept Gifts for Educational Purposes.

13. A school board shall be able and be deemed always to have been able to be constituted trustees for any educational endowment or charity for purposes connected with education, whether such endowment or charity was established before or after the passing of the principal Act, and to have and always to have had power to accept any real or personal property given to them as an educational endowment or upon trust for any purposes connected with education: Provided that—

(1.) Nothing in this section shall enable a school board to be trustees for or accept any educational endowment, charity, or trust, the purposes of which are inconsistent with the principles on which the school board are required by section fourteen of the principal Act to conduct schools provided by them; and,

(2.) Every school connected with such endowment, charity, or trust shall be deemed to be a school provided by the school board, except that nothing in this section shall authorise the school board to expend any money out of the local rate for any purpose other than elementary education; and,

(3.) Nothing in this section shall affect the law of mortmain, ...

Note 13.—Sec. 14 of the principal Act (Education Act, 1870, p. 9), requires that a school provided by a Local Education Authority shall be conducted as a public elementary school, and that no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school.

Schools which are deemed to have been provided by a school board are to be deemed to be provided by the Local Education Authority: see Education Act, 1902, Sch. II. (13).

With reference to the transfer of an endowment to a Local Education Authority, see note to sec. 23 of the Education Act, 1870, as to the cases of *The London School Board* v. *Faulconer, Gurney and others* v. *West Ham School Board*, and *The Llanbadarnfawr School Board* v. *The Official Trustees of Charitable Trusts*.

In *Re Poplar and Blackwall Free School* (L. R. 8 Ch. Div. 545), the Master of the Rolls observed: "A difficulty sometimes occurs in cases where an existing charity school is transferred to a school board, and a new scheme has to be prepared for the regulation of the charity fund. Application of the fund for the general purposes of the school

is objectionable, because that is really a grant in aid of rates, and not strictly for the benefit of the school. I think that the fund should be applied somewhat in the mode suggested, that is, for the advancement of learning in the school; as, for instance, in establishing exhibitions or scholarships."

In *R.* v. *Charity Commissioners for England and Wales* (1897), 1 Q. B. 407, it appeared that, under a scheme under the Endowed Schools Act, 1869, and amending Acts, six competent persons, duly qualified to discharge the duties of the office of almoner, were to be appointed by the Governors of Christ's Hospital on the recommendation of the School Board for London. The School Board, on a vacancy occurring, nominated a lady as almoner, but the governors refused to appoint her on the ground that, being a woman, she was not qualified, and further that they could refuse to appoint a person, even though qualified to discharge the duties of the office and duly recommended. The London School Board applied to the Charity Commissioners to determine, under clause 143 of the scheme, the regularity or validity of the proceedings of the governors in refusing to appoint the lady. Clause 143 provided "that any question affecting the regularity or validity of any proceedings under the scheme shall be determined conclusively by the Charity Commissioners." The Charity Commissioners refused to decide the question, and the London School Board applied for a *mandamus* to compel them. It was held by the Court (Wright and Bruce, JJ.) that a *mandamus* ought not to issue on the ground that the School Board had alternative, convenient and effectual remedies, namely, by proceedings to have the question decided under sec. 28 of the Charitable Funds Act, 1853, or by action against the governors in the ordinary course. In *R.* v. *Christ's Hospital Governors* (1917) 1 K. B. 19, the Court held that *mandamus* was the remedy to compel the governors to appoint the almoner recommended.

In *In re Barrett's Trust, Dyson* v. *Sheffield Corporation.* A sum of money was paid to trustees for founding two scholarships at the Sheffield Wesleyan Proprietary Grammar School. The trust deed provided that if the school should cease to exist the trustees should apply the net income of the money towards the advancement and encouragement of education and learning as they in their absolute discretion should think best; provided that in the event of the school becoming vested in a corporate body for the purposes of a school or college and its constitution being thereby changed, the trusts should be executed in favour of such school or body so incorporated so far as they could reasonably be made applicable, in priority to any other application of the income. Subsequently, the school was incorporated under the Companies Acts with the above name. Later the name was changed to that of Wesley College, Sheffield. The school continued to be mainly denominational, but not exclusively so, as it had previously been. Still later the school premises were sold to the Corporation of Sheffield as the Local Education Authority under the Act of 1902, and thereafter the school was carried on on undenominational lines. On a summons taken out by the trustees to determine how the income of the fund should be dealt with, Warrington J. held that the grammar school ceased to exist, within the meaning of the deed, when the proprietary body was incorporated and became the Wesley College; that then it became vested in a corporate body for the purposes of a school or college, that the proviso operated as long as the school was carried on by the old body of proprietors, but ceased to operate when the school was transferred to the Local Education Authority. The result was that the discretion of the trustees then became unfettered (26 T. L. R. 331).

As to the extension of the provisions of the Endowed Schools Act as to schools, or endowments of schools to schools in receipt of a parliamentary grant, and the power of the Board of Education to approve schemes in such cases, see sec. 75 of the Education Act, 1870.

See also sec. 2 (2) of the Board of Education Act, 1899, p. 110, with respect to the exercise by the Board of Education of powers of the Charity Commissioners in matters which relate to education, and sec. 13 of the Education Act, 1902, p. 163, as to endowments.

It may be observed that the Charities Inquiries (Extension) Act, 1892, empowers the council of any county or county borough, if they think fit, to pay or contribute towards the expenses of any inquiry conducted by the Charity Commissioners into any charities which are by the trusts governing their administration expressly appropriated in whole or in part for the benefit of their county or county borough, or of any part thereof. The payment or contribution may be made out of the county fund, or in the case of a county borough out of the borough fund or borough rate. The Reports of the Charity Commissioners shew that the inquiries that have taken place under this Act of 1892, have been attended with great advantage.

With regard to the term "local rate" it is to be construed as referring to the rate out of which the expenses of the Local Education Authority are payable (Education Act, 1902, Sch. III. (2)).

As to the application of the Mortmain Acts, see sec. 46 of the Education Act, 1918.

Notices for Purposes of Elementary Education Acts.

20. Notices and other matters required by the Elementary Education Acts, 1870 and 1873, to be published, shall, unless otherwise expressly provided, be published either by advertisement, and by affixing the same on the doors of churches and chapels, and other public places, or in such other manner as the Education Department may either generally or with respect to any particular district, place, or notice, or class of districts, places, or notices, by order determine, as being in their opinion sufficient for giving information to all persons interested (1); and all overseers, assistant overseers, and officers of guardians shall comply with the directions of the Education Department with respect to such notices, and any expenses incurred by them in carrying into effect this section may be paid as their expenses under the Acts relating to the relief of the poor. (2)

Every person who wilfully tears down, injures, or defaces any notice affixed in pursuance of the Elementary Education Acts, 1870 and 1873, or any order of the Education Department made thereunder, shall be liable, on summary conviction, to a penalty not exceeding forty shillings. (3)

Note 20.—(1.) The Education Act, 1870, by sec. 80, which has been repealed, rendered it necessary, in every case where it was not otherwise expressly provided by that Act, that notices and other matters required to be published should be published by advertisement in one or more newspapers, as well as by causing copies to be affixed on church

and chapel doors and other places to which public notices were usually affixed.

An order of the Education Department dated the 15th of October, 1875, as to the publication of notices with regard to the deposit of bye-laws, provides as follows :

> From and after the date of the present order, the notice of deposit of bye-laws under sec. 74 of the Elementary Education Act, 1870, shall be published only by advertisement in some one or more of the newspapers circulating in the district of the board whose bye-laws are so deposited.

(2.) Sec. 34 of the Education Act, 1876, which provided that expenses incurred by officers of guardians in carrying into effect this section when paid by the guardians, might be charged by them to the parish in respect of which such expenses were incurred, was repealed by the Education Act, 1902.

(3.) As to proceedings for recovery of penalties, see sec. 23.

Returns by Schools to School Boards.

22. In any school district in which a bye-law under section seventy-four of the principal Act is in force, the school board of such district may from time to time supply forms to any public elementary school for the purpose of obtaining reasonable information with respect to the attendance of children residing in their district who attend such school ; and the managers of such school, if they fail to cause such forms to be truly filled up and returned in manner required by the school board, or to cause such information to be given as will enable the school board to ascertain whether a child resident within their district and attending that school attends the same in manner required by the said bye-law, shall cause to be produced to such member or officer of the school board or other person as may be duly authorised in that behalf by the school board, at any reasonable time when required by him, the registers and other books and documents containing information with respect to the attendance of children at such school, and shall permit him to inspect and take copies of and extracts from the same.

If any difference arises between a school board and the managers of a public elementary school as to whether the information required by the said forms is or is not reasonable, such difference shall be referred to the Education Department, whose decision shall be final.

Note 22.—As to the term "managers," see sec. 3 of the Education Act, 1870.

In a case in which the superintendent visitor of the London school board desired to obtain the names of the children on the roll of a voluntary school for the purpose of verifying the returns of the annual scheduling, the Education Department held that this was undoubtedly reasonable information with respect to the attendance of children within the meaning of this section, and accordingly decided that the managers must either furnish the information asked for or allow any person duly authorised by the school board to inspect the registers of the school.

Legal Proceedings.

23. All offences and penalties under the principal Act or this Act, or any bye-law under the principal Act, which may be prosecuted or recovered on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

The court of summary jurisdiction, when hearing and determining an information or complaint, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Note 23.—With regard to the service of summonses by the police, recovery of penalties, applications for distress warrants, costs of distress, and adjudication by members of school boards on school board summonses, see note 10 in sec. 74 of the Education Act, 1870, pp. 57 and 58 above. Also see sec. 37 of the Education Act, 1876, p. 99.

In *R.* v. *Walton* (*Chester Justices*) 9 L. G. R. 1231, the hearing of a summons against a child's parent for failing without reasonable excuse to comply with a school attendance order was adjourned several times to give the parent an opportunity of complying with the order. At each hearing the bench was differently constituted and only one of the Justices had been present at all the different adjournments. It was proved, however, that at each adjourned hearing there had been a re-hearing of the evidence given on former hearings and this was held to be sufficient.

Regulations as to Legal Proceedings.

24. With respect to proceedings before a court of summary jurisdiction (1) for offences and penalties under the Education Acts or any bye-laws made thereunder the following provisions shall have effect :— . . . (2)

* * * * * *

(4.)* Any justice may require by summons any parent or employer of a child or young person, required by the Education Acts or by any bye-laws, orders, or other instruments made thereunder to attend school, to produce the child or young person before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the

* The preliminary paragraph and Sub-secs. (4) (5) (6) and (8), as printed above, were substituted for the original sub-secs. of sec. 24 by sec. 50 of the Education Act, 1918.

court, to comply with such summons shall be liable to a penalty not exceeding twenty shillings. (3)

(5.) A certificate purporting to be under the hand of the principal teacher of a public elementary or continuation school, stating that a child or young person is or is not attending such school, or stating the particulars of the attendance of a child or young person at such school, shall be evidence of the facts stated in such certificate. (4)

(6.) Where a child or young person is apparently of the age alleged for the purposes of the proceedings, it shall lie on the defendant to prove that the child or young person is not of such age. (5)

* * * * * *

(8.) Where a Local Education Authority are, by reason of the default of the managers or proprietor of an elementary or continuation school, unable to ascertain whether a child or young person who is resident within the district of such Local Education Authority and attends such school attends school in conformity with the Education Acts or any bye-laws, orders, or other instruments made thereunder, it shall lie on the defendant to show that the child or young person has attended school in conformity with the said Acts, bye-laws, orders, or other instruments. (6)

(9.) Any person may appear by any member of his family or any other person authorised by him in this behalf. (7)

Note 24.—(1.) As to "Court of Summary Jurisdiction," see sec. 23.

(2.) Sub-secs. 1 and 2 of this section were repealed by the Summary Jurisdiction Act, 1884; sub-sec. 3 by the Education Act, 1918.

(3.) With regard to the penalty for failing to comply with a bye-law, see sec. 74 of the Education Act, 1870, p. 48, and sec. 6 (2) of the Education Act, 1900, p. 121.

(4.) As to the offence of forging or counterfeiting a certificate, or giving or signing a false certificate, or knowingly using a forged or false certificate, see sec. 25.

(5.) The Education Act, 1876, by secs. 25 and 26, pp. 96 and 97, provides facilities for obtaining certified copies of entries in the registers of births for purposes connected with elementary education.

(6.) With regard to the powers of Local Education Authorities to obtain information as to attendance of children at public elementary schools not provided by them, see sec. 22, *ante*.

(7.) As to the appearance of the Local Education Authority in legal proceedings, see sec. 85 of the Education Act, 1870, p. 67.

Forgery of Certificate, and giving False Information.

25. Every person who forges or counterfeits any certificate which is by this Act made evidence of any matter, or gives or signs any such certificate which is to his knowledge false in any material particular or, knowing any such certificate to be forged, counterfeit, or false, makes use thereof, shall be liable on summary conviction to imprisonment for a period not exceeding three months, with or without hard labour.

This section is extended, by sec. 37 of the Education Act, 1876, p. 99, to the forgery of certificates under that Act.

DEFINITIONS AND REPEAL.

Interpretation.

27. In this Act—

The term "guardians" includes any body of persons performing the functions of guardians within the meaning of the Acts relating to the relief of the poor :

The tern "union" means any union or incorporation of parishes under any general or local Act, and any single parish having guardians as defined by this Act under any general or local Act :

The term "common fund" means, in the case of a union which comprises only one parish, the fund applicable to the relief of the poor of such parish : . . .

Repeal and Savings.

28. The principal Act is hereby repealed, to the extent specified in the third column of the fourth schedule to this Act.

Provided that—

(1.) Any order or regulation of the Education Department made under any enactment hereby repealed shall continue in force as if it had been made under this Act :

(2.) Any school board elected under any enactment hereby repealed shall continue and be deemed to have been elected under this Act :

(3.) The repeal of any Act or enactment by this Act shall not—

(*a.*) Affect anything duly done or suffered under any such Act or enactment ; or

(*b.*) Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any such Act or enactment, or bye-law ; or

(*c.*) Affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any such Act, enactment, or bye-law ; or

(*d.*) Affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

* * * * * *

FOURTH SCHEDULE.

Act repealed.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Short Title.	Extent of Repeal.
34 & 35 Vict., c. 75.	The Elementary Education Act, 1870.	The sub-section numbered ten in section thirty-seven; section fifty-seven; section fifty-nine; the sub-section numbered nine in section sixty; sections eighty and eighty-nine; section ninety, from "knowingly personate" to "voting in any such election or;" the rules numbered one and three in the first part of the second schedule; so much of the rule numbered six in the third part of the second schedule as relates to fixing a day for a casual election, and the conditions in rule one of the third schedule marked (*b.*) (*f.*) and (*g.*).

N.B. Section 28 and the Fourth Schedule were wholly repealed by the Statue Law Revision Act, 1883; but they have been inserted here for convenience of reference.

WENLOCK
ELEMENTARY EDUCATION ACT,

(37 & 38 Vict., c. 39.)

An Act to provide for the Exception of the Borough of Wenlock from the Category of Boroughs under the "Elementary Education Act, 1870."

[30*th July*, 1874.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Wenlock not to be deemed a Borough, &c.

1. That for the purposes of the "Elementary Education Act, 1870," the municipal borough of Wenlock shall not be deemed to be a borough, and the elections of school boards within the said borough shall take place and be conducted in the manner and under the Regulations in such Act provided for a parish.

This Act is not included amongst the Acts expressly repealed by the Education Act, 1902, but it appears to be rendered inoperative by that Act.

The provision that for "the purposes of the Elementary Education Act, 1870, the municipal borough of Wenlock shall not be deemed to be a borough" does not appear to exclude, in the case of this borough, which at the last census had a population exceeding ten thousand, the operation of sec. 1 of the Education Act, 1902, under which the council of a non-county borough with a population of over ten thousand is constituted the Local Education Authority for that borough for the purpose of elementary education. As regards the provision as to the election of a school board, the Local Education Authority had the powers and duties of a school board from the appointed day : see sec. 5 of the last-mentioned Act.

THE
ELEMENTARY EDUCATION ACT, 1876.

(39 & 40 Vict., c. 79.)

An Act to make Further Provision for Elementary Education.

[15*th August*, 1876.]

Whereas it is expedient to make further provision for the education of children, and for securing the fulfilment of parental responsibility in relation thereto, and otherwise to amend and to extend the Elementary Education Acts :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

The following sections of this Act are the provisions which are now in force.

In connection with these sections, it is to be borne in mind—

(1.) *That references in this Act to a school board are to be construed as references to the Local Education Authorities, and that the Local Education Authorities are therefore the local authority for the purposes of this Act, and that a reference to a school district is to be construed as a reference to the area for which the Local Education Authority act, except in the case of paragraph 2 of sec.* 19 *;*

(2.) *That the Local Education Authority throughout their area have the powers and duties of a school board and school attendance committee, and that school boards and school attendance committees are abolished ;*

(3.) *That a Local Education Authority may delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers, except the power of raising a rate or borrowing money ; and*

(4.) *That the Acts cited as the Education Acts,* 1870 *to* 1918, *are to be read as one* (*Education Act,* 1918, *sec.* 52, *p.* 437).

Preliminary.

Short Title.

1. This Act may be cited as the " Elementary Education Act, 1876."

See note to sec. 27 (4) of the Education Act, 1902, as to the " Elementary Education Acts, 1870 to 1900 " ; see also the note to sec. 52 of the Education Act, 1918.

Extent of Act.

2. This Act shall not, save as otherwise expressly provided, apply to Scotland or Ireland.

By sec. 53 it was provided that the provisions in this Act with respect to the conditions to be fulfilled by schools in order to obtain an annual parliamentary grant shall apply to Scotland, but sec. 53 was repealed by the Education (Scotland) Act, 1908.

Commencement of Act.

3.* This Act shall, save as otherwise expressly provided, come into operation on the first day of January, one thousand eight hundred and seventy-seven (which day is in this Act referred to as the commencement of this Act).

Part I.

Law as to Employment and Education of Children.

Declaration of Duty of Parent to educate Child.

4. It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act.

Note 4.—Prior to the passing of the present Act there was no express statutory declaration as to the duty of a parent to cause his child to receive efficient elementary instruction. The word "child" is defined by sec. 48 as meaning a child between the ages of five and fourteen years, but see the definition in sec. 48 of the Education Act, 1918, p. 426.

Terms in this Act are, so far as is consistent with the tenor thereof, to have the same meaning as in the Elementary Education Acts, 1870 and 1873. The term "parent," therefore, "includes guardian and every person who is liable to maintain or has the actual custody of any child" (see the Education Act, 1870, sec. 3). This definition includes the father and grandfather, and the mother and grandmother of a child, as by the 43 Eliz., c. 2, sec. 7, they are liable to maintain the child. See also *Hance* v. *Burnett*, in note to sec. 11 of this Act, and *Hance* v. *Fairhurst*, and *School Board for London* v. *Jackson*, in note to sec. 12.

For provisions as to orders and penalties, see secs. 11, 12, and 37.

Enforcement of Act by School Board or School Attendance Committee of existing Local Authority.

7. The provisions of this Act respecting the employment of children shall be enforced—

(1.) In a school district within the jurisdiction of a school board, by that board; . . . (1)

Every such school board . . . (in this Act referred to as the local authority) shall, as soon as may be, publish the

* Sec. 3 was repealed by the Statute Law Revision Act, 1894.

provisions of this Act within their jurisdiction in such manner as they think best calculated for making those provisions known. . . .

It shall be the duty of such local authority to report to the Education Department any infraction of the provisions of section seven of the Elementary Education Act, 1870, in any public elementary school within their district which may come to their knowledge, and also to forward to the Education Department any complaint which they may receive of the infraction of those provisions. (2)

Note 7.—(1.) The provisions in this section as to the appointment of school attendance committees are repealed, and school boards cease to act (Education Act, 1902, secs. 5, 25). The provisions of this Act relating to the employment of children will be repealed by the Education Act, 1918—new provisions have been made by the Employment of Children Act, 1903, and sec. 13 of the Education Act, 1918, pp. 238 and 372.

(2.) For definition of the term "public elementary school," see sec. 7 of the Elementary Education Act, 1870, p. 6.

Two different classes of cases appear to be provided for by the subsection. The first are those in which the Local Education Authority by inquiry or otherwise have satisfied themselves that the regulations above referred to have been infringed. These cases it will be their duty to report to the Board of Education. The second are those where the Local Education Authority receive complaints of infraction of the regulations; and in these cases they must forward the complaints to the Board of Education, who will, no doubt, institute such inquiries with regard to them as may be necessary. This provision was proposed with the view of affording additional security that the "conscience clause" (*i.e.* sec. 7 of the Act of 1870) shall be strictly carried out.

Provisions as to Order of Court for Attendance at School of Child habitually neglected by Parent or habitually wandering and consorting with Criminals or Disorderly Persons.

11. If either—

(1.) The parent of any child above the age of five years . . . habitually and without reasonable excuse neglects to provide efficient elementary instruction for his child (1); or

(2.) Any child is found habitually wandering or not under proper control, or in the company of rogues, vagabonds, disorderly persons, or reputed criminals (1);

it shall be the duty of the local authority, after due warning to the parent of such child, to complain to a court of summary jurisdiction, and such court may, if satisfied of the truth of such complaint, order that the child do attend some certified efficient school willing to receive him and named in the order, being either such as the parent may select, or, if he do not select any, then such public elementary school as the court

think expedient, and the child shall attend that school every time that the school is open, or in such other regular manner as is specified in the order. (2)

An order under this section is in this Act referred to as an attendance order. (3)

Any of the following reasons shall be a reasonable excuse: (4)

(1.) That there is not within *such distance as may be prescribed by the bye-laws*, measured according to the nearest road, from the residence of such child any public elementary school open which the child can attend; or

(2.) That the absence of the child from school has been caused by sickess or any unavoidable cause.

Note 11.—(1.) In *Saunders* v. *Crawford* (L. R. 9 Q. B. D. 612; 51 L. J. Q. B. D. 460; 46 L. T., N. S., 420), the question was raised whether this section, so far as it relates to the class of children referred to in the first clause, had not practically become inoperative by reason of the repeal of sec. 8 in this Act by sec. 107 of the Factory and Workshop Act, 1878. It appeared that a summons had been taken out under this section charging the defendant with having habitually and without reasonable excuse neglected to provide efficient elementary instruction for his child, whom the summons described as being of the age of thirteen years or thereabouts, and as prohibited by this Act from being taken into full-time employment. It was argued that there was no child who could be said to be "under this Act prohibited from being taken into full-time employment"; that the only provision in the Act which would be said to prohibit the full-time employment of children was sec. 8, which incorporated certain sections of old Factory Acts; and that, as sec. 8 had been repealed by the Factory Act, 1878, this section (sec. 11) had become inoperative so far as regards the first clause. The Court adopted this connection and decided accordingly. The same question was, however, raised in two subsequent cases, *Winyard* v. *Toogood*, and *Hance* v. *Fortnum and others, Justices of Liverpool* (L. R. 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T., N. S., 229; 31 W. R. 271). These cases, in consequence of the decision in *Saunders* v. *Crawford*, were heard before five judges (Coleridge, C. J., and Field, Hawkins, Stephen, and Watkin Williams, JJ.). The Court (overruling *Saunders* v. *Crawford*) held that the clause applies to children who by sec. 5 are prohibited from being employed at all, or who under that section can only be partially employed, the children in either case being "prohibited from being taken into full-time employment," that it was not intended that it should be restricted to children referred to in sec. 8 now repealed, and consequently that the clause is still in force. Sec. 5 will be repealed by the Education Act, 1918.

The case of the *London School Board* v. *Bridge* (L. R. 2 Q. B. D. 397; 46 L. J. M. C. 193; 36 L. T., N. S., 698) raised the question whether in a district in which there were bye-laws in force it was competent to the school board to institute proceedings against the parent under the bye-laws in a case which came within the terms of this section, or whether they were limited to proceedings under this Act. It appeared that M. had neglected to send his child to school according to the bye-laws of the school board, and the board caused an application to be made for a summons against him with a view to enforcing the penalty for breach of the bye-laws. The magistrate, upon the facts stated on

the application for the summons, came to the conclusion that the parent had "habitually neglected to provide efficient elementary instruction for his child," and held that the school board were bound to proceed under this section, and accordingly declined to issue a summons for non-compliance with the bye-laws. On an application for a *mandamus* requiring the magistrate to issue the summons, the Court held that the magistrate was right. The same question was subsequently raised in *Morgan* v. *Haycock* (44 J. P. 199), and in that case also it was held that where there was habitual neglect within the meaning of this section, the proceedings should be under the statute, and not under the bye-laws.

The difficulty occasioned by these decisions was met by the provision in sec. 4 of the Education Act, 1880, that "proceedings may in the discretion of the local authority, or person instituting the same, be taken for punishing the contravention of a bye-law, notwithstanding that the act, or neglect, or default alleged as such contravention constitutes habitual neglect to provide efficient elementary education for a child within the meaning of sec. 11 of the Elementary Education Act, 1876, but sec. 4 of the Act of 1880 has been repealed by sec. 51 of the Education Act, 1918.

In the cases of children to whom bye-laws apply (see sec 8 (1) and (2) on p. 359), it may be assumed that proceedings will now rarely be taken under this section except when the circumstances are such that it is desirable to obtain an attendance order with the view to the child being sent to an industrial school, under sec. 12 of the Act, in the event of the attendance order not being complied with. As regards children above the maximum age to which the bye-laws apply the only proceedings that can be taken for enforcing school attendance will be those provided for by secs. 11 and 12 of this Act.

The term "parent," as stated in the note to sec. 4, *ante*, includes "guardian and every person who is liable to maintain or has the actual custody of any child." With regard to the term "parent" as thus defined, see *Hance* v. *Burnett* (45 J. P. 54). In that case a complaint was laid against a married woman for breach of the bye-laws in the case of her child. At the date of the alleged offence the child was living with her and was under her control, but the father was at sea in pursuit of his lawful calling. The justices on the hearing of the cause doubted whether a married woman could be regarded otherwise than as the agent of her husband, and dismissed the complaint. On a case stated by the justices, it was held that in the absence of the husband, whether by desertion or in the pursuit of his calling, it might be for years or months, the person having the care and custody of the child was liable for neglect of the bye-laws. See also *School Board for London* v. *Jackson*, and *Hance* v. *Fairhurst* referred to in note to sec. 12.

The first clause of the section refers to "any child above the age of five years," and the second clause to "any child." By sec. 48, "a child in this Act means a child between the age of five and fourteen years," p. 100. But by sec. 48 of the Education Act, 1918, unless the context otherwise requires, the expression "child" means any child up to the age when his parents cease to be under an obligation to cause him to receive efficient elementary instruction or to attend school under the enactments relating to elementary education and the bye-laws made thereunder; and by sec. 52, the Education Act, 1918, is to be read as one with the Education Acts, 1870 to 1916: see the note to sec. 52 on p. 436.

As to the special provisions with regard to blind and deaf children, see 56 & 57 Vict., c. 42, and as to defective and epileptic children, 62 and 63 Vict., c. 32, *post*, p. 445.

(2.) The Local Education Authority are the local authority. See sec. 7.

With regard to the duty of the local authority when they are informed by any person of any child in their jurisdiction who is stated by that person to be liable to be ordered by a court under this Act to attend school, see sec. 13, *post*.

If the parent selects the school which the child is to be ordered to attend, it will be sufficient if it is a certified efficient school," but if the parent makes no selection, it must be a "public elementary school." As to the definition of a "certified efficient school," see secs. 16 and 48; and as to that of a "public elementary school," see sec. 7 of the Education Act, 1870, p. 6.

If the parent does not make any selection of a school, and there is no public elementary school which the child can attend within two miles, measured according to the nearest road, from the residence of the child, the justices will not be in a position to make an attendance order.

In *Thompson* v. *Rose* (61 L. J. M. C. 26; 65 L. T. 851; 40 W. R. 155), a school attendance officer laid an information against the father of a child for habitually and without reasonable excuse neglecting to provide efficient elementary education for his child, and applied for an attendance order. It appeared that there were public elementary schools in the district within two miles from the child's residence, and from one of which the child had been expelled for irregular attendance. The father pleaded guilty. He was asked whether he would name a school, but said that he would leave it to the bench. The school attendance officer was not prepared to name a school which was willing to receive the child, and the justices then declined to make an order, being of opinion that the whole section should be read as applying only to schools willing to receive a child, and that it was the duty of the complainant to name a school willing to receive the child, and this he had failed to do. On a case stated for the opinion of the High Court, it was held by Mr. Justice Mathew and Mr. Justice Smith that the decision of the justices was right. The phrase "willing to receive the child" applied to the whole of the section, and it was incumbent on those who applied for the order to name some school willing to receive the child.

In a case stated by a metropolitan police magistrate who had dismissed a complaint preferred by an officer of the London County Council, appointed under the Elementary Education Act, it appeared that Hearn, the respondent, on March 20th, 1908, and on other days, being the parent of a child of the age of twelve years, notwithstanding due warning, unlawfully, habitually, and without reasonable excuse neglected to provide efficient elementary instruction for the child. It was proved that the respondent previously to March, 1908, enrolled the child at a certain school and that the child attended, but that his attendances between March 9th and March 27th were four only out of a possible thirty. The defence was that the child would not go to school and that his irregular attendance was his own fault and not the respondent's. The magistrate found as a fact that the irregular attendance was not owing to the respondent's neglect and dismissed the summons on the grounds (a) that the enrolling of the child at the school, coupled with his attendance there, was a sufficient provision of elementary instruction within sec. 11 of the Elementary Education Act, 1876, the object of which was to compel the parent to provide means of education by entering into a contract with the managers of a suitable school, and that when subsequently elementary education became free the enrolment of the child at a school chosen would be a sufficient compliance with the section; (b) that if this decision were wrong yet

the mere fact of irregular attendance was not sufficient evidence of neglect on the part of the respondent ; (c) that even if irregular attendance were *prima facie* evidence of neglect, the magistrate, believing the respondent's statement as to the child's wilful absence from school, was right in acting upon it and finding there was no neglect.

The Court held that the magistrate should have made the order and remitted the case to him to deal with it.

The parent's duty under sec. 11 is not satisfied by the parent merely enrolling the child on the books of an efficient elementary school and telling him to go there. An order may be made under sec. 11 unless the parent can show that the child's failure to attend was explained or accounted for by a reasonable excuse within the meaning of the section. If an attendance order is made and not complied with and there is no reasonable excuse, proceedings can be taken under sec. 12. *London County Council* v. *Hearn* (7 L. G. R. 312).

In *Shiers* v. *Stevenson* (105 L. T. 522 ; 9 L. G. R. 1137), it appeared from a case stated for the opinion of the High Court that the child had attended a private school the appointments of which were not efficient or in accordance with the modern requirements of the Board of Education. The school inspector of the Local Education Authority visited the school and found that the child was not being provided with efficient elementary instruction there. After due warning proceedings under sec. 11 of the Education Act, 1876, were taken against the parent and it was contended that the Local Education Authority had failed to name a certified efficient school willing to receive the child (citing *Thomson* v. *Rose* (above)) ; that the proceedings should have been taken under sec. 4 ; that sec. 11 only related to children of the vagrant class or children not attending any school of any kind ; that irrelevant evidence had been admitted ; that the parent had complied with the statute by sending his child to school and that on the evidence it could not be held that the parent had unlawfully, etc., neglected to provide efficient elementary instruction for the child.

The magistrate overruled these contentions and made an attendance order in which a school was specified for the child to attend. On appeal the King's Bench Division held that the magistrate was right.

In *Isle of Wight County Council* v. *Holland* (1909) (7 L. G. R. 1182), an order was made under sec. 11 requiring a parent to send his child to C school. After the order the child attended D school twenty-nine times in five weeks out of forty-six during which the school was open. She did not attend the C school. On proceedings for breach of the order the Court held that the justices ought to convict the parent.

For the purposes of this section a school certified by the Board of Education under the 56 & 57 Vict., c. 42, *post*, for blind or deaf children, may in the case of a blind or deaf child be treated as a public elementary school, see sec. 7 (2) of that Act. The provision in the Act referred to also applies to a school certified by the Board of Education for defective and epileptic children. See sec. 5 of 62 & 63 Vict., c. 32, *post*.

(3.) For proceedings in the case of non-compliance with an "attendance order," see sec. 12.

A certified day industrial school is a "certified efficient school," (see 77 (2), Children Act, 1908). With regard to receiving children into a certified day industrial school under attendance orders, and the payments to be made by the parents and the parliamentary contributions in such cases, see secs. 79 and 81). The Order in Council of the 2nd April, 1909, by Art. X. (see p. 329), prescribes regulations which must be strictly observed when proceedings are taken for obtaining an attendance order requiring a child to attend a certified day industrial school.

(4.) The reasons which are to be deemed reasonable excuses are similar to those provided for by sec. 74 of the Elementary Education Act, 1870, when bye-laws are made. One exception, however, is that, under the present section, it will be a reasonable excuse if there is no public elementary school open which the child can attend within *such distance as may be prescribed by the bye-laws* measured according to the nearest road, from the residence of the child; as to "nearest road," see p. 54. Under the Act of 1870 the bye-laws may prescribe the distance, subject to the condition that it shall not exceed *three miles*. As to "reasonable excuses," see note (7) to sec. 74 on p. 53, and *R.* v. *Morris* cited on p. 93. In *R.* v. *Walton* (*Chester Justices*), 9 L. G. R. 1231, the question was whether the parent had or had not failed to provide his child with efficient elementary instruction on 3rd September, 1910; and it was held that evidence of the state of the child's education in March, 1911, was relevant as to the insufficiency of the instruction that the child had received up to 3rd September, 1910. See also *Hewitt* v. *Thompson*, referred to in note to sec. 12, p. 92.

By sec. 8 (7), of the Education Act, 1918, the words "there is not within such distance as may be prescribed by the bye-laws," are to be substituted for the words "there is not within two miles" in sec. 11 of the Education Act, 1876.

Proceedings on Disobedience to Order of Court for Attendance at School.

12. Where an attendance order is not complied with without any reasonable excuse within the meaning of this Act, a court of summary jurisdiction, on complaint made by the local authority, may, if it think fit, order as follows:—

(1.) In the first case of non-compliance, if the parent of the child does not appear, or appears and fails to satisfy the Court that he has used all reasonable efforts to enforce compliance with the order, the Court may impose a penalty not exceeding, with the costs *twenty shillings*; but if the parent satisfies the Court that he has used all reasonable efforts as aforesaid, the Court may, without inflicting a penalty, order the child to be sent to a certified day industrial school, or if it appears to the Court that there is no such school suitable for the child, then to a certified industrial school; and

(2.) In the second or any subsequent case of non-compliance with the order, the Court may order the child to be sent to a certified day industrial school, or if it appears to the Court that there is no such school suitable for the child, then to a certified industrial school, and may further, in its discretion, inflict any such penalty as aforesaid, or it may for each non-compliance inflict any such penalty as aforesaid without ordering the child to be sent to an industrial school;

Provided that a complaint under this section with respect to a continuing non-compliance with any attendance order

shall not be repeated by the local authority at any less interval than two weeks.

. . . . . .

Note 12.—An "attendance order" is an order made by a court of summary jurisdiction under sec. 11. As to the reasons for non-compliance with the order which are to be deemed a "reasonable excuse," see note 4 to that section; and sec. 74, of the Education Act, 1870, note (7), p. 53.

See also sec. 13, *post*, as to the duty of the Local Education Authority, as the local authority under sec. 7, when they are informed by any person of any child in their jurisdiction who is stated by that person to be liable to be ordered by a Court to be sent to an industrial school.

In *Hance* v. *Fairhurst* (51 L. J. M. C. 219), the question was raised whether the term "parent" in this section includes the person for the time being having the custody of the child, so that such person may be convicted for non-compliance with an attendance order, when the order has in fact been made on another person. In the case referred to it appeared that an attendance order was made in December, 1880, on F., ordering him to send his child to a certain school. On the 4th of March, 1881, complaint was made against him for non-compliance with the order. His wife appeared on his behalf at the hearing, and a fine of one shilling was imposed. On the 20th of June, 1881, F. died, leaving the respondent his widow. The attendance order was still in force. It had been made against the deceased husband, and a copy of it had been served upon him. No copy or minute had ever been served on the respondent, although from her appearance before the Court on the occasion when her husband was fined, she must have been aware of the order. Under these circumstances complaint was made against her for non-compliance with the attendance order. It was argued that the order was an order for the attendance of the child at school, and not merely an order on a particular parent, and that it affected the child in the custody of any person, especially if, as here, such person was well aware of the order. It was contended that if such were not the case serious difficulties would be thrown in the way of enforcing the attendance of the children whose fathers were at sea. An attendance order could not be made, or, if made, could not be enforced against the husband in his absence. If made on the mother during the husband's absence, it could not be enforced on the husband's return, for the child would be in the custody of the husband. The justices held that the liability under the attendance order attached to the person upon whom the order was made, and the copy or minute served. The defendant had not been warned before the proceedings were taken under sec. 11: she had had no opportunity of selecting a school: she had not been summoned to show cause why the order should not be made: and finally she had not been ordered to cause the child to attend school. They therefore dismissed the complaint. The Court (Mr. Justice Field and Mr. Justice Bowen) held that the justices were right.

A further question as to the liability of a parent was raised in *School Board for London* v. *Jackson* (L. R. 7 Q. B. D. 502; 50 L. J. M. C. 134). In that case an order had been made requiring Caroline Jackson to cause her child to attend a board school situated in the parish of St. Mary, Islington. The order was not complied with, and the mother was consequently summoned. She appeared before the police magistrate and stated that as she was quite unable to maintain her daughter, who was between thirteen and fourteen years of age, she had sent her to an aunt at Fulham. The magistrate dismissed the summons on the ground that it had not been proved that the child was residing with

and under the control of her mother, the defendant. He thought that the section defining the term "parent" did not contemplate that both the parent and the person having the actual custody of the child should be simultaneously liable to be convicted. The primary liability was, in his view, with the person who had the actual custody of the child. The Court held that the decision of the magistrate was wrong. The child, it was said, was sent away to stay with an aunt, but that did not relieve the mother from the obligation imposed on her by the statute. The case was not one where there was a permanent residence apart from the parent.

In *Hewitt* v. *Thompson* (58 L. J. M. C. 60 ; 60 L. T. 268), it appeared that an attendance order had been made in February, 1888, in respect of the child of the defendant, and had been duly served on the defendant, that on August 28th, 1888, the child did not attend school, that between June 30th and September 1st the child had been absent eleven times, and that the defendant had used every endeavour short of actually taking the child to school to ensure his regular attendance ; but the child had played truant against the defendant's wish. The magistrate, under these circumstances, being of opinion that the case of *Belper School Attendance Committee* v. *Bailey* (see note to sec. 74 on pp. 54-5), was in point, held that the fact that the father had used every endeavour short of actually taking the child to the school to ensure his attendance at school, was a reasonable excuse for non-compliance with the attendance order, and that he had no power to make an order to send the child to a day industrial school. The High Court held that the father had not a "reasonable excuse" within the meaning of the Act. If the question were one as to imposing a penalty on the father, the fact of the father having used every reasonble endeavour to comply with the order would be a sufficient answer, but here the proceedings were not hostile to the father.

In *Richardson* (App.) v. *Saunders* (Resp.) (L. R. 6 Q. B. D. 313 ; 50 L. J. M. C. 65 ; 44 L. T., N. S., 474), it was held by Mr. Justice Lindley and Mr. Justice Lopes that if a parent sent his child to a school, in which the rule of the school was that fees should be paid and should be paid in advance, without the necessary fees, although he was aware that without the school fees admission to the school would be refused, the attendance order had been complied with. This decision was, however, substantially reversed by the decision of a Divisional Court, consisting of five members, in the further case of *Saunders* v. *Richardson* (L. R. 7 Q. B. D. 388 ; 50 L. J. M. C. 137 ; 45 L. T., N. S., 319 ; 29 W. R. 800). It was there laid down that the law is not satisfied by the child presenting himself at the door of the school without the school fees when school fees are payable, the parent knowing that in consequence of the non-payment of the fees the child will not receive instruction, and will not be admitted into the school. The parent could not evade the attendance order by merely sending his child to the school without the school fee. It was further held, in *London School Board* v. *Wood* (L. R. 15 Q. B. D. 415 ; 54 L. J. M. C. 145 ; 54 L. T. 88), that if a child is sent to school without the school fees when fees are payable, the parent does not cause his child to attend within the meaning of the bye-laws, although the child may be admitted to the school and receive instruction therein.

The payment of fees in public elementary schools was abolished by sec. 26 of the Education Act, 1918.

See also *Jones* v. *Rowland* referred to in note to sec. 74 of the Education Act, 1870, where the Court held that a parent did not cause his child to attend school when he was aware that admission would be refused at the particular school to which the child was sent.

In the case of *The London School Board* v. *Harvey* (L. R. 4 Q. B. D. 451 ; 48 L. J. M. C. 130 ; 27 W. R. 783), it was held that an order of a court of summary jurisdiction imposing a penalty on the parent of a child for non-compliance with an order for the attendance of the child at school, may be proved in subsequent proceedings by the minute book of the court containing an entry of the order, and that it is unnecessary to produce a copy of the order signed by the clerk of the peace or other officer of the sessions.

As to the service of summonses by the police in proceedings under this section, the recovery of penalties, the application for warrant of distress on non-payment of penalty, and the costs of distress warrant, see note on sec. 74 of the Education Act, 1870, pp. 57-58.

The penalty referred to in sub-sec. 1 of this section was not to exceed "with costs five shillings." By operation of sec. 6 (2) of the Education Act, 1900, "twenty shillings" is substituted for five shillings. The twenty shillings inclusive of costs is a maximum penalty and it is in the discretion of the Justices whether a less penalty shall be imposed.

The Summary Jurisdiction Act, 1879, by sec. 8 provides that "when a fine adjudged by a conviction by a court of summary jurisdiction to be paid does not exceed five shillings, then, except so far as the Court may think fit to expressly order otherwise, an order shall not be made for payment by the defendant to the informant of any costs ; and the Court shall, except so far as they think fit to expressly order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him ; the Court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs."

In *Rex* v. *Morris and others, Justices* ; *ex parte Broadbent*, also reported as *R.* v. *West Riding of Yorkshire Justices* ((1910), 2 K. B. 192 ; 8 L. G. R. 777), cause was shown against rules *nisi* for *certiorari* and for *mandamus* calling on justices to hear and determine a summons against the applicant under sec. 12 of the Elementary Education Act, 1876, for disobedience to a school-attendance order.

The applicant, who had himself been a school teacher, had been summoned under sec. 12 for failing to send his two children to an elementary school in compliance with an order for their attendance made under sec. 11. The only excuses allowed as reasonable excuses for non-attendance by sec. 11 were, (1) no school within two miles ; (2) sickness or any unavoidable cause. The applicant desired to educate his children at home on account of their health, and contended that his own efficient instruction and teaching was a reasonable excuse for their non-attendance at an elementary school. The justices declined to hear evidence as to the applicant's capacity to teach his children, upon the ground that having once made the attendance order, all they could do was to see it carried out.

The Court held that it was open to the applicant to give evidence that he was efficiently educating his children at home ; and was not prevented from doing so by the circumstance that an attendance order had been made. It was not the intention of sec. 12 of the Act to limit the reasons which might be set up to the two named in sec. 11. The rules were made absolute.

When application is made for distress warrants for the recovery of penalties for non-attendance of children at school, the justices are in their discretion entitled to require affirmative evidence that the defendants possess goods *primâ facie* distrainable. In *R.* v. *German* (61 L. J. M. C. 43 ; 56 L. T. 264), a rule *nisi* was granted calling upon certain justices to show cause why a *mandamus* should not issue to compel

them to grant an application for distress warrants against the goods of two persons who had been fined for the non-attendance of their children at a board school. The justices had refused to issue the warrants on the ground that, before doing so, affirmative evidence should be given to satisfy them that the defendants had goods upon which distraint could be made. The school board officer stated that one of the defendants was a gardener and the other a labourer, both in constant employment and in the occupation of cottages—but would not say positively that either of them possessed any goods at all, and no other evidence was forthcoming. The Court held that the justices were within their right in requiring affirmative evidence of the means of the defendants, and discharged the rule.

Duty of Local Authority as to taking Proceedings under this Act.

13. Where the local authority are informed by any person of any child in their jurisdiction who is stated by that person to be liable to be ordered by a court under this Act to attend school, or to be sent under this Act . . . it shall be the duty of the local authority to take proceedings under this Act . . . accordingly, unless the local authority think that it is inexpedient to take such proceedings.

Provided that nothing in this section shall relieve the local authority from the responsibility of performing their duty under the other provisions of this Act.

Note 13.—The Local Education Authority are the local authority: see sec. 7.

As to the cases in which an order may be made for the attendance of a child at school, see sec. 11, and as to those in which a child may be sent to an industrial school, see sec. 58 of the Children Act, 1908. The provisions in secs. 13 to 17 of this Act, which related to the sending of children to Industrial Schools, were repealed by the Children Act, 1908.

A private individual may under the latter Act take proceedings for the removal of a child to an industrial school. In *Walker* v. *Laxton* (70 L. T. 690) an application was made by a local officer of the Society for the Prevention of Cruelty to Children for an order for the removal to an industrial school of a child who was residing with her sister, who was proved to be a common prostitute. The officer of the society had reported the case to the officer of the school attendance committee, but it was not shown that the committee had authorised or requested the proceedings which had been instituted. The justices held that an application should be made to the local authority under sec. 13 of the Act and proof given that they had declined to take proceedings, and on this ground they dismissed the complaint. The Court held that it was clear that under the statutes referred to either a local authority or a private individual had the right to take proceedings as if the other had no authority.

A local authority may obtain an attendance order requiring a child to attend a certified day industrial school.

With respect to the classes of children authorised by sec. 58 of the Children Act, 1908, to be sent to a certified industrial school, who, under sec. 78 of that Act, may be sent to certified day industrial schools under orders of detention, see art. 12 of the Order in Council of the 2nd April, 1909 (See p. 330).

See also sec. 74 (9) of the Children Act, 1908, as to the local authority contributing to the ultimate disposal of a child who has been sent to an industrial school.

Conditions for obtaining Parliamentary Grant.

20. The conditions required to be fulfilled by schools in order to obtain annual parliamentary grants shall provide that the income of the schools shall be applied only for the purpose of public elementary schools.

Note 20.—The Elementary Education Code, 1919, contains a provision (art. 52) in accordance with this enactment.

See also secs. 96 and 97 of the Education Act, 1870, and sec. 44 of the Education Act, 1918, p. 413, and notes thereon as to conditions of annual parliamentary grants.

Provision as to Bye-laws under sec. 74 of the Elementary Education Act, 1870 (33 & 34 Vict., c. 75), as extended by this Act.

23. . . . It shall be the duty of every local authority to enforce the bye-laws made by that authority in pursuance of section seventy-four of the Elementary Education Act, 1870.

Note 23.—For provisions of sec. 74 of the Elementary Education Act, 1870, with regard to bye-laws, see p. 47. See also notes on that section.

The Local Education Authority are the local authority for the enforcement of bye-laws: see sec. 7.

The appointment of officers for execution of bye-laws was specially provided for in sec. 28 of this Act, but that section has been repealed by sec. 51 of the Education Act, 1918. The special provision did not seem to be required because all necessary officers can be appointed under sec. 35 of the Education Act, 1870, and one of the the officers so appointed can be directed to take proceedings where necessary under sec. 38 of this Act.

ADMINISTRATIVE PROVISIONS.

Supplemental Provisions as to Certificates of Proficiency and Previous Attendance at School.

24. . . . The Education Department may from time to time by order make, and when made revoke and vary, regulations with respect to certificates of age for the purposes of this Act . . . and such regulations shall be observed by the local authority and the managers of certified efficient schools.

All regulations made by the Education Department under this section shall be laid before Parliament in the same manner as minutes of the Education Department, relating to the annual parliamentary grant.

Regulations as to certificates of age, proficiency and school attenddance were issued by the Board of Education on the 21st March, 1901.

For definition of "certified efficient school," see sec. 48, p. 100.

Certificates of Birth for purposes of Act.

25. Where the age of any child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the elementary education or employment in labour of such child, any person on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of such fee, not exceeding one shilling, as the Local Government Board from time to time fix, shall be entitled to obtain a certified copy under the hand of the registrar or superintendent registrar of the entry in the register under the Births and Deaths Registration Acts, 1836 to 1874, of the birth of the child named in the requisition.

Note 25.—Sec. 134 of the Factory and Workshop Act, 1901, provides as follows:—

"Where the age of any young person under the age of sixteen years, or child, is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the employment in labour or elementary education of the young person or child, any person shall, on presenting a written requisition in such form, and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of a fee of sixpence be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register under the Births and Deaths Registration Act, 1836 to 1874, of the birth of that young person or child; and such form of requisition shall on request be supplied without charge by every superintendent registrar and registrar of births, deaths, and marriages."

The Local Government Board, by an order dated the 23rd December, 1901, prescribed a form of requisition.

It is only upon a requisition in such form and containing the particulars prescribed that the registrar is required to give for the fee of sixpence a certified copy of the entry in the register. The form of requisition prescribed by the Local Government Board requires that it shall show "in what year the young person or child was born," and if this information is not given it would appear that a registrar would be justified in declining to act upon the requisition until the form has been properly filled up. A search in the indexes prepared under the Births and Deaths Registration Act, 1836, would probably enable the applicant to ascertain the precise year of birth for filling up the form, and when a search is requested for this purpose, the registrar is entitled to the usual search fee. It is considered that it is only under these circumstances that a fee can properly be demanded for a search for an entry of a birth of which a certificate is required under the provisions of this section.

A penny inland revenue stamp is not required to be affixed to these certificates, as they are issued pursuant to and for the purposes of an Act of Parliament, and are therefore exempt from stamp duty (Stamp Act, 1891, Sch.).

Sec. 14 of the Education Act, 1918, will prohibit the employment of children (as defined in sec. 48 of that Act), in factories, workshops, mines and quarries; see p. 376.

Returns of Registrars of Births and Deaths to School Boards.

26. Every registrar of births and deaths, when and as required by a local authority, shall transmit, by post or otherwise, a return of such of the particulars registered by him concerning deaths and births of children as may be specified in the requisition of the local authority.

The local authority may supply a form, approved by the Local Government Board, for the purpose of the return, and in that case the return shall be made in the form so supplied.

The local authority may pay, as part of their expenses under this Act, to the registrar making such return, such fee as may be agreed upon between them and the registrar, not exceeding twopence for every birth and death entered in such return.

Note 26.—The Local Education Authority are the "local authority": see sec. 7. The section appears intended to provide for those cases where the local authority deem it desirable that they should be regularly supplied with particulars of the several births and deaths registered by the registrar for the district; whilst sec. 25 meets the case where information is required as to the age of a particular child. It will be observed that the section only refers to the registrar and not to the superintendent registrar also.

The Local Government Board have approved of a form of return for the purpose of this section. The form is published by Messrs. Chas. Knight & Co. (Limd.), 227 Tooley Street, London, S.E. 1.

Where a local authority under the powers given by this section have obtained a return of the births of children in their district, which will enable them to grant age certificates to individual children, they are, on the application of any parent or other person interested in the education or employment of a child, to grant a certificate under the hand of their clerk or other officer deputed for this purpose, for a fee not exceeding fourpence for each child. See regulations of the Board of Education dated 21st of March, 1901.

A certificate from a local authority to the effect that it appears from the returns transmitted to them in pursuance of this Act by the Registrar of Births and Deaths that the child was born at the date named in the certificate, will be sufficient for the purposes of the Factory and Workshop Act, 1901.

Under the regulations as to the duties of registrars of births and deaths made under the Births and Deaths Registration Act, 1874, a certificate of the registry of a child's birth may be granted by the registrar at the time of registration on one of the forms furnished by the Registrar-General for the purpose, on payment of a fee not exceeding threepence. The Education Department in a letter dated the 2nd of March, 1896, stated that doubts having been expressed whether this certificate is a registrar's certificate which may be accepted by the local authority as evidence of age for the purpose of the issue of a labour certificate under the Regulations of the Education Department as to certificates of age, proficiency, and school attendance, they were advised that such certificate of the registry of birth should, when presented, be accepted by the local authority as evidence of age satisfying the requirements of the revised regulations.

Power to authorize Appointment of School Attendance Committee by Urban Sanitary Authority.

33. . . .

Provided, that the expenses (if any) of a school attendance committee appointed by an urban sanitary authority shall be paid out of a fund to be raised out of the poor rate of the parish or parishes comprised in the district of such authority, according to the [*rateable value*] of each parish, and the urban sanitary authority shall, for the purpose of obtaining payment of such expenses, have the same power as a board of guardians have for the purpose of obtaining contributions to their common fund under the Acts relating to the relief of the poor. . . .

Note 33.—This section is repealed except as applied by the Education Act, 1902 (Sch. IV., Part II.), p. 230.

As regards this saving, see sec. 18 (1) of that Act, which provides that the expenses of a council under the Act shall, so far as not otherwise provided for, be paid in the case of the council of an urban district other than a borough in manner provided by sec. 33 of the Elementary Education Act, 1876, as respects the expenses mentioned in that section.

The expenses referred to will be those of the council of an urban district under sec. 3 of the Education Act, 1902, with respect to education other than elementary, and of the council as the Local Education Authority for the purpose of Part III. of that Act in the case of a district with a population of over twenty thousand.

The sum to be raised in each parish will be based on the "assessable value" of the parish (as defined in the Agricultural Rates Act, 1896), *i.e.* the rateable value of the district less half the rateable value of agricultural land.

For the purpose of obtaining the contribution of a parish to their common fund a board of guardians address an order to the overseers of the parish, requiring the payment to the treasurer of the guardians of a certain sum on a certain day. Where the guardians deem it desirable, the sum may be ordered to be paid by instalments on days to be specified in the order. The order should be addressed to all the overseers (including the churchwardens, when they are *ex-officio* overseers) by name. When a copy of the order has been served upon one of the overseers, the guardians may enforce the order against the person so served as fully and effectually as if a copy had been also served upon every one of the overseers (Poor Law Amendment Act, 1849, sec. 7).

As regards the enforcement of a contribution order, the Poor Rate Act, 1839, by sec. 1, provides that in every case in which any contribution by overseers or other officers of any parish of moneys required by the guardians acting for such parish, or for any union which shall include such parish, shall be in arrear, it shall be lawful for any two justices acting within the district wherein such parish shall be situate, on application under the hand of the chairman or acting chairman of the board, to summon the overseers or other officers to show cause, at a special sessions to be summoned for the purpose, why such contribution has not been paid, and after hearing the complaint preferred under the authority of such chairman or acting chairman, and on behalf of such board, if the justices at such sessions shall think fit, by warrant under their hands and seals, to cause the amount of the contribution so in arrear, together with the costs occasioned by such

arrear, to be levied and recovered from the said overseers or other officers in like manner as moneys assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs as aforesaid, when levied and recovered, to be paid to the said board. Provided always that no distress made under any such warrant of justices shall be replevisable.

Legal Proceedings.

Application of 36 & 37 Vict., c. 86, secs. 23-5, to Penalties and Punishment for fraudulently obtaining Payment of Fees.

37. Sections twenty-three, twenty-four, and twenty-five of the Elementary Education Act, 1873 (which provisions relate to legal proceedings, and the forgery of certificates), shall so far as applicable apply in the case of offences and penalties under this Act, and proceedings for such offences and penalties and of certificates for the purposes of this Act, in like manner as if those sections were enacted in this Act and in terms made applicable thereto. (1)

An order which a court of summary jurisdiction have authority to make in pursuance of this Act may be made in manner provided by the Summary Jurisdiction Acts. (2)

Note 37.—(1.) For sections referred to see the Elementary Education Act, 1873, pp. 78-80. See also sec. 38 of this Act, as amended by the Education Act, 1918.

(2.) The Summary Jurisdiction Acts are defined as meaning the 11 & 12 Vict., c. 43, and any Acts amending the same. Two justices are required to be present at the hearing and determination of the case. In *R.* v. *Walton*, cited on p. 78, there had been adjournments and only one justice was present at all of them, but at each hearing there had been a re-hearing of the evidence given on former hearings and this was held to be sufficient.

No Prosecutions except with the Authority of two Members of a School Board, or Local Authority.

38. No legal proceedings for non-attendance or irregular attendance at school shall be commenced in a court of summary jurisdiction by any person appointed to carry out the Education Acts or any bye-laws made thereunder, except by the direction of not less than two members of the education committee of a Local Education Authority, or of any sub-committee appointed by that committee for school attendance purposes.

Sec. 38, as above printed, is substituted for the original section by sec. 50 of the Education Act, 1918.

As to the appointment of officers for this purpose, see sec. 36 on p. 46.

Miscellaneous.

General Definitions.

48. A child in this Act means a child between the ages of five and fourteen years.

Terms in this Act shall, so far as is consistent with the tenor thereof, have the same meaning as in the Elementary Education Acts, 1870 and 1873.

The term "certified efficient school" in this Act means a public elementary school, and any workhouse school certified to be efficient by the Local Government Board, and any public or state aided elementary school in Scotland, and any national school in Ireland, and also any elementary school which is not conducted for private profit, and is open at all reasonable times to the inspection of Her Majesty's inspectors, and requires the like attendance from its scholars as is required in a public elementary school, and keeps such registers of those attendances as may be for the time being required by the Education Department, and is certified by the Education Department to be an efficient school. (1)

The term "Factory Acts" in this Act, where the Factory Act of any particular year is not referred to, means . . . any Acts for the time being in force regulating factories and workshops. (2)

The term "Secretary of State" means one of Her Majesty's principal Secretaries of State.

Note 48.—(1.) The definition of "child" is enlarged by sec. 48 of the Education Act, 1918, see p. 426 ; see also sec. 52 of the Act of 1918 and the note thereto as to the effect of reading that Act with the Education Acts, 1870 to 1916, p. 436.

For definition of the term "public elementary school," see sec. 7 of the Education Act, 1870, p. 6, and notes thereon.

Any workhouse school certified to be efficient by the Local Government Board is to be deemed to be a certified efficient school. Very few of the old workhouse schools are in use. Of these most if not all have been certified by the Board, after having obtained reports from their inspectors, as efficient. As to the granting of certificates of school attendance and certificates of proficiency in the case of children in workhouse schools which have been certified to be efficient, see regulations of the Board of Education, of 21st March, 1901. See also the Circular of the Local Government Board, dated 20th June, 1919, Appendix, p. 630. See also sec. 7 of the 56 & 57 Vict., c. 42, as to schools for blind and deaf children, and sec. 5 of the 62 & 63 Vict., c. 32, as to schools for defective and epileptic children, pp. 449 and 464.

It will be seen, from sec. 77 (2) Children Act, 1908, that a certified day industrial school is also to be deemed a "certified efficient school."

In April, 1902, the Board of Education laid down rules with respect to the conditions under which they would recognise as "certified efficient schools," those elementary schools which do not seek annual aid and are not inspected by the officers of other departments of the state. Very few of such schools now remain and therefore the rules referred to are not reprinted in this book.

(2.) The provisions of the Factory and Workshop Act, 1901, with respect to the education of children, have been repealed by the Education Act, 1918, except as regards children lawfully employed in factories and workshops at the commencement of the Act of 1918, *i.e.*, apparently, on the day appointed for the coming into operation of sec. 14 of that Act.

THE ELEMENTARY EDUCATION ACT, 1880.

(43 & 44 Vict., c. 23.)

An Act to make further Provision as to Bye-laws Respecting the Attendance of Children at School under The Elementary Education Acts.

[26*th August*, 1880.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short Title and Construction.

1. This Act may be cited as the Elementary Education Act, 1880, and shall be construed as one with the Elementary Education Act, 1876. . . .

See note to sec. 27 (4) of the Education Act, 1902, p. 213, as to the "Elementary Education Acts, 1870 to 1900." See also the note to sec. 52 of the Education Act, 1918, p. 436.

Obligation to make Bye-laws as to the Attendance of Children at School.

2. It shall be the duty of the local authority (within the meaning of the Elementary Education Act, 1876) of every school district in which bye-laws respecting the attendance of children at school under section 74 of the Elementary Education Act, 1870, are not at the passing of this Act in force, forthwith to make bye-laws under that section for such district.

If at any time . . . it appears to the Education Department that in any school district there are no bye-laws under that section in force, the Education Department may either proceed under *the provisions of the Education Act*, 1902, *relating to the enforcement of the local Education Authority's duties by mandamus*, or may make bye-laws respecting the attendance of children at school in that district, and the bye-laws so made shall have effect and be enforced and be subject to revocation and alteration as if they had been made by the local authority for that district and sanctioned by the Education Department in pursuance of section 74 of the Elementary Education Act, 1870. . . .

Note 2.—The Local Education Authority are the local authority within the meaning of the Elementary Education Act, 1876, see sec. 7 of that Act, *ante*.

The reference to a school district is to be construed as a reference to the area for which the Local Education Authority act. A Local Education Authority may delegate to the Education Committee, without any restrictions or conditions, as they think fit, any of their powers, except the power of raising a rate or borrowing money.

Prior to the passing of this Act, it was optional with the school board of a district whether or not they would make bye-laws respecting the attendance of children at school.

With regard to bye-laws as to school attendance, see notes to sec. 74 of the Education Act, 1870, p. 48.

Sec. 27 of the Elementary Education Act, 1876, which was referred to in this section, is repealed by the Education Act, 1902, which provides by Sch. III. (9), to the effect that a reference to the provisions of that Act relating to the enforcement of the performance of the Local Education Authority's duties by *mandamus* shall, be substituted in sec. 2 of the present Act for the reference to sec. 27 of the Act of 1876. The provisions of the Education Act, 1902, so substituted are those of sec. 16 of the Act (p. 165).

THE SCHOOL BOARDS ACT, 1885.

(48 & 49 Vict., c. 38.)

An Act to amend the Law Relating to School Boards so far as affected by the Incorporation of a Municipal Borough. . . .

[31*st July*, 1885.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Provision as to School Boards affected by Incorporation of Municipal Borough.

1. Whereas by sub-section one of section two hundred and thirteen of the Municipal Corporations Act, 1882, it is enacted as follows :

" Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporations Act to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority : "

And whereas sub-section six of the same section two hundred and thirteen provides that a local authority for the purposes of the above enactment shall mean the authorities therein mentioned, " and any other authority not in this section excepted and not being a school board, and having powers of local government and of rating for public purposes : "

And whereas difficulties have arisen respecting the effect of the creation by a charter of a municipal borough, where the whole or part of the area of such borough is comprised in the district of a school board (1), and it is expedient to authorise the removal of such difficulties by a scheme under the said Act :

Be it therefore enacted as follows :—

(1.) The words " and not being a school board " in sub-section six of section two hundred and thirteen of the Municipal Corporations Act, 1882, are hereby repealed ;

A scheme under that section if affecting a *school board*—

(*a*) shall before being settled by the Committee of Council be referred to the consideration of the Education Department; and

(*b*) shall not place the new borough under more than one *school board*; and

(*c*) may provide for the continuance of any bye-laws in force at the date of the scheme. (2)

(2.) Where within seven years before the passing of this Act a charter has extended the Municipal Corporations Act, 1882, or the Acts thereby consolidated, to the municipal borough created by the charter, any scheme relating to a *school board* which might have been made under the said Acts if this Act had passed at the date of the said charter may be made after the passing of this Act, and part eleven of the Municipal Corporations Act, 1882, shall apply accordingly: Provided that—

(*a*) such scheme may be made on the petition either of the council of the said borough or of the persons who composed the *school board*, or any of them; and

(*b*) the council of the borough may petition against such scheme in accordance with sub-section four of section two hundred and thirteen of the Municipal Corporations Act, 1882; and

(*c*) any such scheme may validate any acts done by the Education Department or the *school board* or the council of the borough or any justice since the date of the charter.

(3.) This section shall be in addition to and not in derogation of any powers in relation to *school boards* for the time being vested in the Committee of the Lords of the Privy Council on Education (who are in this section referred to as the Education Department).

Note 1.—(1.) The references to school boards and school districts in this Act are to be construed as references to Local Education Authorities and the areas for which they act: see Education Act, 1902, Sch. III., and as to London, sec. 1 of the Education (London) Act, 1903, p. 232.

(2.) Sec. 213 of the Municipal Corporations Act, 1882, empowers the Committee of the Lords of His Majesty's Privy Council, where it is proposed to grant a charter constituting a municipal borough, to settle a scheme for the adjustment of the powers, rights, privileges, &c., of any then existing local authority whose district comprises the whole or part of the area of the borough. But in the definition of the term "local authority" a school board was expressly excluded. This occasioned considerable difficulty expecially when the borough included part only of a school district, and it was with the view of meeting this difficulty that the powers as to a scheme under the Act referred to were made applicable to school boards, subject to the provisions of this section.

Sec. 213 of the Municipal Corporations Act, 1882, is as follows:—

"1. Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporation Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

"2. The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition total or partial of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the exisiting local authority, and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid.

"3. The scheme, when settled by the Committee of Council shall be published in the London Gazette, and shall not be of any effect unless confirmed as hereinafter mentioned.

"4. Where, within one month after the publication of the scheme in the London Gazette, a petition against it by any local authority affected thereby, or by not less than one-twentieth of the owners and ratepayers of the borough (such twentieth to be one-twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the borough, and the owners and ratepayers in all cases to include women not under coverture), has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for confirmation either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council.

"5. A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act. . . .

"7. The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights."

Sec. 214 of the Municipal Corporations Act provides that—

"The regulations contained in the seventh schedule with respect to the scheme shall be observed:" and that.

"If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reason it is right that the reasonable costs incurred by the authority or other petitioners in such

promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may Order those costs to be so paid, and they shall be paid accordingly."

The provisions in the seventh schedule of the Municipal Corporations Act, 1882, as to the "procedure for scheme on grant of new charter," are as follows:—

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published in the London Gazette, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation the Committee of Council may introduce a bill for the confirmation of the scheme, which bill shall be a public bill.

6. Before such bill is introduced into Parliament, the Committee of Council may alter the scheme in such manner as they think proper.

7. If while the bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a private bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

Short Title and Construction.

3. This Act may be cited as the School Boards Act, 1885.

This Act, so far as relates to *school boards* on the incorporation of a municipal borough, shall be construed as one with the Municipal Corporations Act, 1882, and together with that Act may be cited as the Municipal Corporations Acts, 1882 and 1885.

This Act, so far as regards the divisions of the metropolis, shall be construed as one with the Elementary Education Acts, 1870 and 1873, and may be cited together with those Acts as the Elementary Education Acts, 1870 to 1885.

As to "school boards," see note 1, p. 104.

See note to sec. 27 (4) of the Education Act, 1902, p. 213, as to the "Elementary Education Acts, 1870 to 1900." See also sec. 52 of the Education Act, 1918, p. 437.

THE ELEMENTARY EDUCATION (BLIND AND DEAF CHILDREN) ACT, 1893.

(56 & 57 Vict., c. 42.)

(See page 445.)

THE VOLUNTARY SCHOOLS ACT, 1897.

(60 Vict., c. 5.)

An Act to provide for a Grant out of the Exchequer in aid of Voluntary Elementary Schools, and for the Exemption from rates of those Schools, and to repeal part of Section Nineteen of the Elementary Education Act, 1876.

[*8th April*, 1897.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Exemption from Rates of Voluntary Elementary Schools.

3. No person shall be assessed or rated to or for any local rate in respect of any land or building used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof.

Note 3.—(1.) This section applies only to public elementary schools not provided by a Local Education Authority (see sec. 4). Public elementary schools provided by a Local Education Authority are not exempt from rating. As to schools which are to be deemed to be provided by a Local Education Authority, see the Education Act, 1902, Sch. II. (13). See also note to sec. 19 of the Education Act, 1870, as to the assessment of schools provided by a Local Education Authority.

The local rates to which the exemption applies are determined by the definition of the expression "local rate" contained in sec. 4. This expression means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in

respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a local rate as before defined. The effect of the definition is to include within the exemption the rates leviable by overseers and by urban district councils. Among the rates so included are the poor rate, rates levied either separately or by an addition to the poor rate for the expenses of a rural district council, or for expenses under the Burial Acts, rates levied under the Lighting and Watching Act, 1833, and general district rates levied by urban district councils. Where no profit is derived by the managers of the school from its letting, the premises referred to in sec. 3 should be omitted from the rate. It should be noticed, however, that the section does not necessarily exempt the entire school premises; it only exempts "land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground." Consequently, any part of the premises used as a teacher's residence will not be exempt, but must be assessed and rated as heretofore.

The buildings of a charitable institution in which children are maintained and trained for domestic service are not exempt from local rates under this section as being "used exclusively or mainly for the purposes of the schoolrooms, offices or playground of a voluntary school," as defined in sec. 4, although the institution is so managed as to comply with the conditions necessary to enable it to earn a parliamentary grant as a public elementary day school. *Patriotic Fund Commissioners* v. *Wandsworth Borough Council* (1903) 1 L. G. R. 711.

As to the term "managers," see sec. 3 of the Education Act, 1870.

See *Trustees of the Jews Deaf and Dumb Home* v. *Wandsworth and Clapham Union Assessment Committee* referred to in note to sec. 19 of the Education Act, 1870, p. 26.

Definitions.

4. In this Act, unless the context otherwise requires—

The expression "voluntary school" means a public elementary day school not provided by a school board: (1)

. . . . . .

The expression "local rate" means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a local rate as before defined: (1)

Other expressions have the same meaning as in the Elementary Education Acts, 1870 to 1893.

(1.) See note on sec. 3.

Extent of Act and Short Title.

5.—(1.) This Act shall not extend to Scotland or Ireland.

(2.) This Act may be cited as the Voluntary Schools Act, 1897.

THE ELEMENTARY SCHOOL TEACHERS' (SUPERANNUATION) ACT, 1898.

(61 & 62 Vict., c. 57.)

(See page 478.)

ELEMENTARY EDUCATION (DEFECTIVE AND EPILEPTIC CHILDREN ACT, 1899.

(62 & 63 Vict., c. 32.)

(See page 457.)

BOARD OF EDUCATION ACT, 1899.

(62 & 63 Vict., c. 33.)

An Act to provide for the Establishment of a Board of Education for England and Wales, and for Matters Connected Therewith.

[*9th August*, 1899.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Establishment of Board of Education.

1. (1.) There shall be established a Board of Education charged with the superintendence of matters relating to education in England and Wales.

(2.) The Board shall consist of a President, and of the Lord President of the Council (unless he is appointed President of the Board), Her Majesty's Principal Secretaries of State, the First Commissioner of Her Majesty's Treasury, and the Chancellor of Her Majesty's Exchequer.

(3.) . . .

(4.) The President of the Board shall be appointed by Her Majesty, and shall hold office during Her Majesty's pleasure.

(5.) . . .

Duties and Powers of Board of Education.

2. (1.) The Board of Education shall take the place of the Education Department (including the Department of Science and Art), and all enactments and documents shall be construed accordingly. (1.)

(2.) It shall be lawful for Her Majesty in Council, from time to time, by Order, to transfer to, or make exercisable by, the Board of Education any of the powers of the Charity Commissioners or of the Board of Agriculture in matters appearing to Her Majesty to relate to education, and the Order may make such provision as appears necessary for applying to the exercise of those powers by the Board of Education the enactments relating to the Charity Commissioners or to the Board of Agriculture. (2)

Provided that any question as to whether an endowment or any part of an endowment is held for or ought to be applied to educational purposes shall be determined by the Charity Commissioners.

Note 2.—(1.) The Board of Education take the place of the Education Department, the term Education Department meaning, according to the interpretation clause in the Elementary Education Act, 1870, "The Lords of the Committee of the Privy Council on Education."

(2) **The Board of Education (Powers) Order in Council, 1900,** dated the *7th of August*, 1900, was made under this section. It contains provisions with regard to *the concurrent exercise of certain powers of the Charity Commissioners by the Board of Education.* It came into operation on the 1st of November, 1900, and provides as follows:—

1. The powers of—

(*a*) inquiring into charities; and (*b*) requiring accounts and statements to be rendered and answers to questions to be returned; and (*c*) requiring copies of and extracts from documents to be furnished; and (*d*) searching records; and (*e*) requiring the attendance of witnesses and the production of documents; and (*f*) examining witnesses on oath and administering oaths conferred on the Charity Commissioners and their Assistant Commissioners and officers by the enactments specified in Part I. of the First Schedule to this Order, or by any scheme under the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, may, so far as they relate to trusts for educational purposes, be exercised by the Board of Education and their officers concurrently with the Charity Commissioners and their Assistant Commissioners and other officers, and accordingly those enactments and schemes and the enactments specified in Part II. of that schedule shall apply with the modifications set forth in the Second Schedule to this Order.

2.—(1.) There shall be transferred to the Board of Education—

(*a*) all powers conferred on the Charity Commissioners by any scheme made under the Endowed Schools Acts, 1869 to 1889, or any of them and regulating an endowment held for, or applicable to, educational purposes in Wales or the county of Monmouth, or by any scheme amending any such scheme, except such of those powers as relate to the vesting or transfer of any land or funds of the endowment in, to, or from the Official Trustee of Charity Lands or the Official Trustees of Charitable Funds; and

(*b*) all powers conferred on the Charity Commissioners by the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, so far as those powers are exerciseable in respect of any endowment so regulated.

(2.) Provided that—

(*a*) land or funds belonging to any such endowment shall not be

vested or transferred in, to, or from the Official Trustee of Charity Lands or the Official Trustees of Charitable Funds except by Order of the Charity Commissioners; and

(*b*) the powers of the Charity Commissioners with respect to—(i.) the appointment and removal of trustees, or otherwise in relation to the constitution of a governing body, of an endowment held partly for educational purposes in Wales and the county of Monmouth and partly for other purposes; and (ii.) the property of an endowment the income of which is applicable partly to educational purposes in Wales and the county of Monmouth and partly for other purposes, shall not be transferred to the Board of Education unless the property of the endowment is administered by a governing body established for educational purposes, and any question whether a governing body was established for educational purposes shall be determined by the Charity Commissioners.

(3.) For the purposes of the transfer effected by this section, the provisions of the Charitable Trusts Acts, 1853 to 1894, and the Endowed Schools Acts, 1869 to 1889, shall apply with the modifications and adaptations set forth in the Second Schedule to this Order, and in the schemes conferring powers transferred by this section the provisions relating to those powers shall have effect as if anything required to be done to, by, or in relation to the Charity Commissioners, were required to be done to, by or in relation to the Board of Education, and any rules, regulations, or forms made, approved, or prescribed by the Charity Commissioners under any such scheme shall continue in force until varied, revoked, or superseded by new rules, regulations, or forms made in accordance with the provisions of the scheme as amended by this Order.

3. This Order may be cited as the Board of Education (Powers) Order in Council, 1900, and shall come into operation on the first day of November one thousand nine hundred.

The enactments specified in the First Schedule, Part I., are the Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137), secs. 9, 10, 11, and 12, as amended by the Charitable Trusts Act, 1887 (50 & 51 Vict., c. 49), and the Charitable Trusts Amendment Act, 1855 (18 & 19 Vict., c. 124), secs. 6 and 7, as amended by the Charitable Trusts Act, 1887 (50 & 51 Vict., c 49).

The enactments specified in Part II. of the First Schedule are the Charitable Trusts Act, 1853, secs. 13, 14, and 15, and the Charitable Trusts Amendment Act, 1855, secs. 8 and 9, as amended by the Charitable Trusts Act, 1887.

The modifications and adaptations provided for by the Second Schedule are as follows:—

References to the Board of Charity Commissioners shall be construed as references to the Board of Education. References to a Charity Commissioner shall be construed as references to a member of the Board of Education. References to Assistant Charity Commissioners shall be construed as references to inspectors and other officers of the Board of Education. References to the secretary and other officers of the Charity Commissioners shall be construed as references to the secretary and other officers of the Board of Education. The Board of Education shall before finally settling the draft of any amending scheme framed under the Endowed Schools Acts, 1869 to 1889, cause all such steps to be taken as are by those Acts required to be taken before any such scheme is submitted for approval to the Committee of Council on Education, and such final settlement shall take the place of the approval required by those Acts, and accordingly the Board of Education shall cause the scheme to be published and circulated in

such manner, and together with such notice, as is required by section thirteen of the Endowed Schools Act, 1873, and the like proceedings may be taken with respect to a scheme so settled as may under the Endowed Schools Acts, 1869 to 1889, be taken with respect to a scheme approved by the Committee of Council on Education. The report required by section sixteen of the Endowed Schools Act, 1873, to be made to the Committee of Council on Education shall be made to Her Majesty the Queen.

With reference to this Order in Council, the Board of Education stated that the powers over Education Endowments in England, which, under this Order, are exerciseable by the Board of Education as well by the Charity Commissioners, are, broadly speaking, powers required in order to obtain full information concerning such endowments. They do not confer on the Board of Education any power to make or amend a scheme, or to relieve Governing Bodies from any of the disabilities which limit the powers of trustees in dealings with the property of the Trust. The Board of Education contemplate that the powers in question will be exercised by them in connection with—(*a*) Inspection of Endowed Schools under section 3 of the Board of Education Act; and (*b*) Local inquiries held with a view to prevent undesirable competition between schools in the same locality, or otherwise to promote the better local organization of Secondary Education.

The above explanation refers to England. In Wales and Monmouthshire the Board of Education take the place of the Charity Commissioners (with the exceptions mentioned in the Order) for the transaction of all business connected with Education Endowments regulated by scheme made under the Endowed Schools Acts.

Educational Endowments in Wales and Monmouthshire not regulated by scheme under those Acts will be affected by the Order to the same extent as Educational Endowments in England.

The Board of Education (Powers) Order in Council, 1901, dated the *24th of July*, 1901, came into operation on the 1st of September, 1901, provides for the transfer of additional powers from the Charity Commissioners to the Board of Education under the powers conferred by this section.—

1.—(1.) The powers conferred on the Charity Commissioners by the Charitable Trusts Acts, 1853 to 1894, and by the Endowed Schools Acts, 1869 to 1889, to frame, approve, certify, establish, and amend schemes shall, so far as those powers are exerciseable in respect of any endowment held solely for educational purposes in England and Wales, and so far as they have not already been transferred to the Board of Education, be transferred to that Board.

Provided that a scheme made by the Board of Education shall not contain provisions requiring or authorizing any land or funds belonging to any such endowment to be vested or transferred in, to, or from the Official Trustee of Charity Lands or the Official Trustees of Charity Funds otherwise than by order of the Charity Commissioners.

(2.) Where the Charity Commissioners, in exercise of the powers conferred on them by the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, determine, by scheme or otherwise, in respect of any endowment held partly for educational purposes and partly for other purposes, what part of the endowment is held for educational purposes that part shall, for the purposes of this Order, be treated as an educational endowment held solely for educational purposes.

(3.) For the purposes of the transfer effected by this section the provisions of the Charitable Trusts Acts, 1853 to 1894, and the Endowed Schools Acts, 1869 to 1889, shall apply with the modifications and adaptations set forth in the schedule of this Order.

(4.) In any scheme made before the commencement of this Order relating to an endowment held solely for educational purposes, provisions empowering the Charity Commissioners to make amending schemes and to make rules, regulations, and forms, and any rules, regulations, and forms made by the Charity Commissioners, before the commencement of this Order in pursuance of any such power, shall have effect as if in those provisions and in those rules, regulations, and forms, references to the Board of Education were substituted for references to the Charity Commissioners.

2. Provisions in any scheme made before the commencement of this Order empowering the Charity Commissioners by order to direct the manner in which a school shall be examined in any year, or directing the Governing Body to send a copy of the examiner's report to the Charity Commissioners, shall have effect as if in any such scheme references to the Board of Education had been substituted for references to the Charity Commissioners.

3. This Order may be cited as the Board of Education (Powers) Order in Council, 1901, and shall come into operation on the 1st day of September, 1901.

Modifications and Adaptations.

The modifications and adaptations referred to in the Schedule are as follows :—

In such of the provisions of the Charitable Trusts Acts, 1853 to 1894, and of the Endowed Schools Acts, 1869 to 1889, as relate to the framing, approving, certifying, establishing, and amending of schemes, or to the powers and duties and proceedings incidental thereto or consequential thereon, for references to the Charity Commissioners and their officers shall be substituted references to the Board of Education and their officers respectively.

The Board of Education shall, before finally settling the draft of any scheme framed under the Endowed Schools Acts, 1869 to 1889, or any of them, cause all such steps to be taken as are by those Acts required to be taken before any such scheme is submitted for approval to the Committee of Council on Education, and such final settlement shall take the place of the approval required by those Acts, and accordingly the Board of Education shall cause the scheme to be published and circulated in such manner and together with such notice as is required by section thirteen of the Endowed Schools Act, 1873, and the like proceedings may be taken with respect to a scheme so settled as may under the Endowed Schools Acts, 1869 to 1889, be taken with respect to a scheme approved by the Committee of Council on Education.

The report required by section sixteen of the Endowed Schools Act, 1873, to be made to the Committee of Council on Education shall be made to His Majesty the King.

The Board of Education stated, with reference to this Order in Council, that the powers transferred to the board are those exercised by the Charity Commissioners for the framing of schemes, under the Endowed Schools Acts and the Charitable Trusts Acts respectively, in the case of endowments in England and Wales, applicable solely to educational purposes. The effect of this transfer, so far as Wales and Monmouthshire are concerned, is to extend the jurisdiction of the board for the making of schemes to educational endowments not already regulated by schemes under the Endowed Schools Acts, 1869 to 1889. The Charity Commissioners will retain their powers in respect of endowments applicable partly to educational and partly to other purposes until such endowments have been duly apportioned by them between the two, when the educational portion so severed

will automatically pass, so far as powers to make or amend schemes are concerned, under the jurisdiction of the board. Provision is also made for the substitution of the board for the charity commissioners as the authority to deal with certain minor details incidental to the working of schemes, but the general jurisdiction of the commissioners in the administration of educational endowments is not affected.

An Order in Council, dated the 11th of August, 1902, made under the powers conferred by this section, provided as follows :—

1. All powers (except the powers of appointing the Official Trustees of Charitable Funds, and of making orders for vesting or transferring lands or funds, in, to, or from the Official Trustee of Charity Lands or the Official Trustees of Charitable Funds) conferred on the Charity Commissioners and their officers (except the said Official Trustees), by (*a*) the enactments specified in the Schedule hereto, or any order, scheme, rule, regulation, form, or other instrument made under any of them : and (*b*) any other enactment, charter, deed, will, order, scheme, rule, regulation, form, or other instrument, shall, so far as those powers relate to endowments held solely for educational purposes, and so far as they have not been transferred to the Board of Education, be transferred to that Board.

2.—(1.) For the purpose of the transfer effected by this Order,—(*a*) In all enactments and instruments, provisions relating to the powers transferred shall be construed as if references to the Charity Commissioners and their officers, except the said Official Trustees, were references to the Board of Education and their officers, and shall have effect as if everything required to be done, to, by, or in relation to the Charity Commissioners and their officers, except the said Official Trustees, were required to be done to, by, or in relation to the Board of Education and their officers. (*b*) The report required by sec. 16 of the Endowed Schools Act, 1873, to be made to the Committee of Council on Education shall be made to His Majesty the King.

(2.) Where the Charity Commissioners, in exercise of the powers conferred on them by the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, determine, by scheme or otherwise, in respect of any endowment held partly for educational purposes and partly for other purposes, what part of the endowment is held for educational purposes, that part shall, for the purposes of this Order, be treated as an educational endowment held solely for educational purposes.

3. This Order shall come into operation on the 1st day of October, 1902, and may be cited as the Board of Education (Powers) Order in Council, 1902, and the Board of Education (Powers) Order in Council, 1900, the Board of Education (Powers) Order in Council, 1901, and this Order may be cited together as the Board of Education (Powers) Orders in Council, 1900 to 1902.

Schedule : 16 & 17 Vict., c. 137 ; 18 & 19 Vict., c. 124 ; 23 & 24 Vict., c. 136 ; 25 & 26 Vict., c. 112 ; 32 & 33 Vict., c. 110 ; 50 & 51 Vict., c. 49 ; 54 & 55 Vict., c. 17, and 57 & 58 Vict., c. 35, The Charitable Trusts Acts, 1853 to 1894. 32 & 33 Vict., c. 56 ; 36 & 37 Vict., c. 87, and 37 & 38 Vict., c. 87, The Endowed Schools Acts, 1869, 1873, and 1874. 17 & 18 Vict., c. 112, The Literary and Scientific Institutions Act, 1854. 21 & 22 Vict., c. 71, The Bishop's Trusts Substitution Act, 1858. 23 & 24 Vict., c. 134, The Roman Catholic Charities Act, 1860. 35 & 36 Vict., c. 24, The Charitable Trustees Incorporation Act, 1872. 45 & 46 Vict., c. 21, The Places of Worship Sites Amendment Act, 1882. 51 & 52 Vict., c. 42, The Mortmain and Charitable Uses Act, 1888. 54 & 55 Vict., c. 73, The Mortmain and Charitable Uses Act,

1891. 55 & 56 Vict., c. 11, The Mortmain and Charitable Uses Amendment Act, 1892. 55 & 56 Vict., c. 29, The Technical and Industrial Institutions Act, 1892. 46 & 47 Vict., c. 61, The Agricultural Holdings Act, 1883. 45 & 46 Vict., c. 80, The Allotments Extension Act, 1882. 50 & 51 Vict., c. 48, and 53 & 54 Vict., c. 65, The Allotments Acts, 1887 and 1890. 45 & 46 Vict., c. 50, The Municipal Corporations Act, 1882. 46 & 47 Vict., c. 18, The Municipal Corporations Act, 1883. 55 & 56 Vict., c. 53, The Public Libraries Act, 1892. 56 & 57 Vict., c. 73. The Local Government Act, 1894. 62 & 63 Vict., c. 14, The London Government Act, 1899.

Any of the powers of the Board of Agriculture relating to education may under this section be transferred to the Board of Education. Under the Board of Agriculture Act, 1889, the Board may inspect and report on any school (not being a public elementary school) in which technical education, practical or scientific, is given in any subject connected with agriculture (including horticulture) and forestry, and can aid institutions by grants.

See also sec. 13 of the Education Act, 1902, as to powers of the Board of Education with regard to endowments, and sec. 45 of the Education Act, 1918, p. 423, empowering His Majesty in Council to constitute official trustees of educational trust property and to apply to those trustees provisions of the Charitable Trusts Acts, 1853 to 1914.

Inspection of Secondary Schools.

3.—(1.) The Board of Education may by their officers, or, after taking the advice of the consultative committee hereinafter mentioned, by any university or other organisation, inspect any school supplying secondary education and desiring to be so inspected, for the purpose of ascertaining the character of the teaching in the school and the nature of the provisions made for the teaching and health of the scholars, and may so inspect the school on such terms as may be fixed by the Board of Education with the consent of the Treasury: Provided that the inspection of schools established by scheme under the Welsh Intermediate Education Act, 1889, shall, subject to regulations made by the Treasury under section nine of that Act, be conducted as heretofore by the Central Welsh Board for Intermediate Education, and that the said Board shall be recognised as the proper organisation for the inspection of any such schools as may be desirous of inspection under this section. (1.)

(2.) The council of any county or county borough may out of any money applicable for the purposes of technical education pay or contribute to the expenses of inspecting under this section any school within their county or borough. (2)

Note 3.—(1.) As to the Consultative Committee, see note on sec. 4.

Rules made by the Board of Education with regard to the Inspection of Secondary Schools under this section are as follows:—

1. The Board of Education will be prepared to conduct an inspection under sec. 3 of the Board of Education Act, 1889, on the following conditions, upon receiving an application for such inspection from the governing body of the school.

The Board cannot undertake to arrange for an inspection to take

place in less than two months from the date on which the formal application for inspection is received.

The inspection will cover (*a*) the administration of the school, (*b*) the condition of the school buildings, and (*c*) the education given throughout the school.

(*a*) For the purposes of the administrative inspection there will be a conference between an inspector and the governing body.

(*b*) The inspection of the school buildings will include sanitary inspection, for which purpose a sanitary expert may, in special cases, have to be called in. It will also include an inspection of all boarding houses conducted by the governors or under their license, or by any member of the school staff, and of the provision for recreation.

(*c*) The educational inspection will include all the subjects comprised in the curriculum of the school.

Where the school is in receipt of grants from the Board, the inspection will be combined with that required for the assessment of the grant.

The charge for inspection, based on the ordinary curriculum, will be as follows, viz:—For a school having not more than 50 students, £5; for a school having more than 50 students and not more than 75, £7 10s.; for a school having more than 75 students and not more than 100, £10; and so on.

In assessing the charge but half the above rate will be payable in respect of those students in a school who are in excess of 400; and a further reduction at the same rate will be made in respect of all students who are in that department of a school which is conducted as a school of science.

A minimum charge of £5 will in all cases be made.

The report of the Board on the efficiency of the school at the time of inspection will be sent to the governing body and to the headmaster or the headmistress of the school, and also to the county council, if that body contributes to the cost of the inspection under sec. 3, sub-sec. 2 of the Act. The report, if published, must be published in its entirety.

The Board of Education, in their Annual Report, 1901, with reference to the inspection thus provided for, stated:—"The inspection is designed to include the administrative as well as the educational organisation of the school, and to have regard to its external relations, or its place in the education supply of the district, as well as to its internal management and the efficiency of the instruction offered. On the latter side its aim is to inquire into the organisation and co-ordination of studies, and into methods of teaching, rather than to test the attainments of the pupils. The inspection includes in all cases a conference between the inspectors and the governing body or managers of the school, which is essential for administrative purposes, and may be made an opportunity for useful discussions of educational principles in connection with facts or tendencies disclosed by the inspection."

(2) The Board of Education, in their Annual Report, 1901, with reference to this provision, stated that the power conferred by the Act on county councils to pay the expense of inspecting schools within their respective counties, had already been exercised, and seemed likely to contribute to the development of this function of the Board.

See the new power given by sec. 27, Education Act, 1918, p. 387.

Consultative Committee.

4. It shall be lawful for Her Majesty in Council, by order, to establish a consultative committee consisting, as to not less than two-thirds, of persons qualified to represent the

views of universities and other bodies interested in education, for the purpose of—

* . . . . .

(*b*) advising the Board of Education on any matter referred to the committee by the Board.

An Order in Council, of the 7th of August, 1900, after reciting this section, established a consultative committee of the Board of Education consisting of eighteen members.

Subject to the provisions of the order as to the retirement of the first members of the committee, the term of office of a member of the committee is six years. On the 1st of October in every second year six members of the committee are to go out of office, and their places are to be filled by such persons as the President of the Board of Education appoints. A person going out of office may be reappointed.

The committee are to elect a chairman, who is to hold office until the next day for the retirement of members of the committee, but, if he continues to be, or is reappointed, a member of the committee, he may be re-elected chairman. If during his term of office the chairman ceases to be a member of the committee, the committee are to elect a new chairman. The chairman is to preside at every meeting of the committee at which he is present.

Such person as the President of the Board of Education appoints is to be the secretary to the committee, and is to hold office during the pleasure of the President of the Board.

The committee are to meet at such times, and notice of meetings is to be given to the members of the committee in such manner, as the President of the Board of Education appoints. At a meeting of the committee, six is to be a quorum. Subject to the provisions of the order the committee may regulate their own procedure. No act or proceeding of the committee is to be questioned on account of any vacancy in their body.

The President of the Board of Education may for special purposes appoint sub-committees of the committee, and any sub-committee so appointed may, within the limits authorised by the President, add to their number persons not being members of the committee.

If a member of the committee is absent from two consecutive meetings of the committee, except for some reason approved by the President of the Board of Education, his office will become vacant.

On a casual vacancy occuring in the committee by reason of the death, resignation, or absence of a member, the President of the Board of Education is to appoint another person in his place, and the person so appointed is to hold office until the time when the person in whose place he is appointed would regularly have gone out of office, and is then to go out of office.

In making appointments under the order the President of the Board of Education is to have regard to the requirements of the Board of Education Act, 1899, that the committee shall consist, as to not less than two-thirds, of persons qualified to represent the views of universities, and other bodies interested in education.

The President of the Board of Education may fix the times of retirement of the members of the committee appointed by the order so that six of them shall retire on the 1st of October, 1902, six on the 1st of October, 1904, and six on the 1st October, 1906.

The Interpretation Act, 1889, applies for the purpose of the interpretation of the order as it applies for the interpretation of an Act of Parliament.

* Para (*a*) of sec. 4 was repealed by the Education (Administrative Provisions) Act 1907: see sec. 16 of that Act.

The order, which may be cited as the Board of Education (Consultative Committee) Order in Council, 1900, came into operation on the 1st of October, 1900.

Orders to be laid before Parliament.

5. The draft of any order proposed to be made under this Act shall be laid before each House of Parliament for not less than four weeks during which that House is sitting, before it is submitted to Her Majesty in Council.

Staff, Remuneration, and Expenses.

6.—(1.) The Board of Education may appoint such secretaries, officers, and servants as the Board may, with the sanction of the Treasury, determine.

(2.) There shall be paid, out of moneys provided by Parliament, to the President of the Board, unless he holds another salaried office, such annual salary not exceeding two thousand pounds, and to the secretaries, officers, and servants of the Board such salaries or remuneration as the Treasury may determine.

Style, Seal, and Proceedings of Board of Education.

7.—(1.) The Board of Education may sue and be sued and may for all purposes be described by that name.

(2.) The Board shall have an official seal, which shall be officially and judicially noticed, and that seal shall be authenticated by the signature of the President or some member of the Board, or of a secretary, or of some person authorised by the President or some member of the Board to act on behalf of a secretary.

(3.) Every document purporting to be an instrument issued by the Board of Education, and to be sealed with the seal of the Board, authenticated in manner provided by this Act, or to be signed by a secretary or any person authorised by the President or some member of the Board to act on behalf of a secretary, shall be received in evidence, and be deemed to be such an instrument without further proof, unless the contrary is shown.

(4.) A certificate signed by the President or any member of the board of Education that any instrument purporting to be made or issued by the President or some member of the Board is so made or issued shall be conclusive evidence of the fact.

See also as to evidence of orders, &c., the Education Act, 1870, sec. 83, and the Education Act, 1876, sec. 45, *ante*.

Power for President or Secretary to sit in Parliament.

8.—(1.) The office of President of the Board of Education shall not render the person holding it incapable of being

elected to, or of voting in, the Commons House of Parliament, and shall be deemed to be an office included in Schedule II of the Representation of the People Act, 1867; in Schedule H of the Representation of the People (Scotland) Act, 1868; in Schedule E. of the Representation of the People (Ireland) Act, 1868; and in Part I. of the Schedule of the Promissory Oaths Act, 1868.

(2.) . . . one of the secretaries of the Board of Education shall not by reason of his office be incapable of being elected to or of voting in the Commons House of Parliament.

The office of Vice-President of the Committee of the Privy Council on Education has been abolished and a Parliamentary Secretary to the Board of Education has been appointed.

Extent, Commencement, and Short Title.

9.—(1.) This Act shall not extend to Scotland or Ireland.

(2.) This Act shall come into operation on the first day of April, one thousand nine hundred.

(3.) This Act may be cited as the Board of Education Act, 1899.

ELEMENTARY EDUCATION ACT, 1900.

(63 & 64 Vict., c. 53.)

An Act to Amend the Elementary Education Acts, 1870 to 1893.

[*8th August*, 1900.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power of Guardians to contribute to Expenses of Public Elementary School.

2. The board of guardians of any poor law union may contribute towards such of the expenses of providing, enlarging, or maintaining, any public elementary school as are certified by the Board of Education to have been incurred wholly or partly in respect of scholars taught at the school, who are either resident in a workhouse or in an institution to which they have been sent by the guardians from a workhouse, or boarded out by the guardians.

Note 2.—Boards of guardians have very generally adopted arrangements under which the children of school age in the workhouses and other poor law establishments have been sent to public elementary schools in the neighbourhood, instead of providing schools for the education of the children in the workhouse or other institution. This has been attended with very beneficial results to the children. But the union for which a board of guardians acts is usually of large area and almost always includes several parishes, and in many cases when it was proposed that the children under the charge of the guardians should be sent to the public elementary schools of the borough or parish in which the workhouse was situated, objection was not unreasonably made on the ground that the burden which the education of the children involved would fall exclusively on the particular district where the workhouse was situated, instead of being shared by all the parishes from which the children were brought to the workhouse. The Board of Education to some extent met this objection by approving, under sec. 4 (1) of the Elementary Education Act, 1891, of a charge of fees for children sent to a public elementary school by the guardians.

The children boarded out by the guardians attended the public elementary schools, and the Board of Education approved of fees being charged in these cases also. The payment of fees in public elementary schools has been abolished by sec. 26 of the Education Act, 1918 except as regards certain specified services, and sec. 4 of the Act of 1891 has been repealed.

It sometimes happened, however, that there was not sufficient school accommodation in the public elementary school or schools in the neighbourhood of the workhouse or other poor law establishment to allow

the admission of the children whom the guardians might desire to send there, and prior to the passing of this Act the guardians were not empowered to contribute towards the cost of providing additional school accommodation in such cases or for children boarded out by them. The enactment was for the purpose of meeting this difficulty. Whilst, however, the guardians are empowered to contribute towards the expenses referred to in the section, there is no actual obligation imposed on them to do so. When school boards were abolished in 1902, and the expenses of a county council as a Local Education Authority were ordered to be paid out of the county fund, the hardship no longer existed of educating, at the expense of one parish, children drawn from the whole union. (Per Swinfen Eady L. J. in *Gateshead Union* v. *Durham County Council* (1918), I Ch., on p. 159.

In that case a board of guardians claimed admission to a public elementary school of children boarded out by them in cottage homes in a parish, not in the Union, but in the area of the Local Education Authority. The guardians had property in the parish for which they paid rates. Admission was refused unless the guardians subscribed to the school, and the Board of Education held that in view of sec. 2 of the Education Act, 1900, it would be not unreasonable on the part of the Local Education Authority, under art. 53 of the Code (1912), to exclude from school, children in respect of whom a contribution was not made. The Court of Appeal, however, decided that the guardians had a statutory right to have free education given at the public elementary school to the children from their cottage homes.

A school certified by the Local Government Board, under the Poor Law (Certified Schools) Act, 1862, is an institution for the purposes of the section as regards children who have been sent there by the guardians from a workhouse.

Bye-laws for Compulsory Attendance.

6.—(1.) In section seventy-four of the Elementary Education Act, 1870 . . . . (which relate to bye-laws for the attendance of children at school), *fifteen* years shall be subtituted for thirteen years. (1)

(2.) The maximum penalty for the breach of a bye-law requiring the attendance of a child at an elementary school, or of an attendance order made under the Elementary Education Act, 1876, shall be twenty shillings, and accordingly twenty shillings shall be substituted for five shillings in section seventy-four of the Elementary Education Act, 1870, and in section twelve of the Elementary Education Act, 1876. (2)

(3.) The said section seventy-four shall have effect as if the sanction therein referred to were the sanction of the Board of Education instead of the sanction of Her Majesty in Council. (3)

Note 6.—(1.) Under sec. 74 of the Act of 1870, p. 47, no bye-laws as to the attendance of children at school could apply to children above the age of thirteen years. This age is now extended to fifteen years by sec. 8 (2) of the Education Act, 1918 (p. 359). As to bye-laws, see notes on sec. 74, pp. 48-58.

(2.) Sec. 74 of the Elementary Education Act, 1870, *ante*, authorised the making of bye-laws requiring the attendance of children at school, and "imposing penalties for the breach of any bye-laws," and enacted that the penalty imposed for the breach of any bye-laws shall

not exceed such amount as with the costs would amount to 5*s*. for each offence. 20*s*. is now substituted for 5*s*. See notes on sec. 74 of the Act referred to as to penalties, pp. 57 and 58.

Sec. 12 of the Elementary Education Act, 1876, provides that where an attendance order is not complied with, without any reasonable excuse within the meaning of that Act, a court of summary jurisdiction, on complaint made by the local authority, may, if they think fit, order as follows:—In the first case of non-compliance if the parent of the child does not appear, or appears and fails to satisfy the court that he has used all reasonable efforts to enforce compliance with the order, the court may impose a penalty not exceeding, with the costs, 5*s*. . . . In this case also 20*s*. is to be substituted for 5*s*.

(3.) Sec. 74 of the Education Act, 1870, provided that the bye-laws should not come into force until they had been sanctioned by Her Majesty in Council, that it should be lawful for Her Majesty by Order in Council to sanction the bye-laws, and that thereupon the same should have effect as if they were enacted in the Act. This provision renders it unnecessary to obtain the sanction of His Majesty in Council, as the sanction of the Board of Education will take the place of and have the same effect as that sanction.

Repeal.

8. *The Acts mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.**

Short Title.

9. This Act may be cited as the Elementary Education Act, 1900, and may be cited with the Elementary Education Acts, 1870 to 1893.

SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict., c. 56.	The Elementary Education Act, 1891	Section ten, from "and the expression" to the end of the section.
56 & 57 Vct., c. 42.	The Elementary Education (Blind and Deaf Children) Act, 1893.	Section four, from "and until" to the end of the section.
		Section five, from "or where the school authority" to "value of each parish."

* Sec. 8 and the schedule were repealed by the Statute Law Revision Act, 1908.

EDUCATION ACT, 1902.*

(2 EDW. 7, C. 42.)

An Act to make further Provision with Respect to Education in England and Wales.

[18*th December*, 1902.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

LOCAL EDUCATION AUTHORITY.

Local Education Authorities.

1. For the purposes of this Act the council of every county and of every county borough shall be the Local Education Authority :

Provided that the council of a borough with a population of over ten thousand, or of an urban district with a population of over twenty thousand, shall, as respects that borough or district, be the Local Education Authority for the purpose of Part III. of this Act, and for that purpose as respects that borough or district, the expression "Local Education Authority" means the council of that borough or district.

Note 1.—By this section the council of every county and of every county borough are constituted the Local Education Authority both for higher and elementary education.

The council of every non-county borough with a population of over ten thousand and of every urban district with a population of over twenty thousand are the Local Education Authority for the borough or district as the case may be for the purpose of Part III. of the Act, which relates only to elementary education. The population referred to is that according to the census of 1901. See sec. 23 (8).

A list of the boroughs with a population exceeding 10,000 and of the urban districts with a population of over 20,000 at the time of the census of 1901 will be found in the Appendix, p. 570.

No growth of population subsequent to the census of 1901 will affect the position of the council of a non-county borough or of an urban district under the Act, or will take the borough or district out of the jurisdiction of the county council for the purpose of Part III. of the Act as to elementary education. There may, however, be ground for the contention that when by reason of an extension of the boundaries of a non-county borough, which at the time of the census of 1901 had a population of less than 10,000, the population of the area included in the borough, according to that census, becomes more than 10,000, the

* The Education Act, 1902, is made applicable to London, as far as may be, by the Education (London) Act, 1903, see page 232.

council of the borough will be the Local Education Authority for Part III. of the Act, to the exclusion of the council of the county. The same contention would apply in the case of an urban district where in consequence of an extension of the district the population included in its area becomes, according to the census of 1901, more than 20,000.

When the council of a non-county borough or of an urban district will under the Act be the Local Education Authority for Part III. as to elementary education, they may, by agreement with the council of the county and with the approval of the Board of Education, relinquish in favour of the council of the county their powers and duties as the Local Education Authority for the borough or district for the purposes of Part III. of the Act. When these powers and duties are so relinquished the area of the authority as respects those powers will become part of the area of the county council (see sec. 20 (*b*)).

The council of a county and of a county borough and the council of a non-county borough or urban district, when a Local Education Authority, are required to establish an education committee or committees constituted in accordance with a scheme made by the council and approved by the Board of Education. As to the powers of the council in relation to the education committee, see sec. 17 (2).

As to disqualification for membership of the education committee, see sec. 17 (4) p. 169. It may be noted here that the teachers in schools and colleges, which are provided or maintained by the council, are disqualified for serving as members of the council, although not disqualified for serving on the education committee. Teachers in schools provided by the Local Education Authority are disqualified for membership of the authority; and under sec. 23 (7) teachers in a school maintained but not provided by the Local Education Authority are in the same position as respects disqualification for office as members of the authority as teachers in a school provided by the authority.

When a county councillor is elected for a division of the county consisting wholly or partly of a non-county borough or urban district, the council of which are the Local Education Authority for the purpose of Part III. of the Act as to elementary education, such councillor is not to vote in respect of any question arising before the county council which relates only to matters under Part III. of the Act (sec. 23 (3)).

With respect to the powers of the council of a non-county borough or of an urban district as regards higher education, whether they are a Local Education Authority under Part III. of this Act or not, see sec. 3.

As regards the expenses of a Local Education Authority, see sec. 18; and as to powers of borrowing, see sec. 19.

Conveyances to be made to Corporation.

In re Leeds Institute and the Leeds City Council (1909), I Ch. 500; 7 L. G. R. 912, the Leeds Institute of Science, &c., had entered into an agreement with the Leeds City Council (as the Education Authority for Leeds under sec. 1 of the Education Act, 1902), for the transfer to them of certain freehold property belonging to the Institute, on the condition (*inter alia*) that the City Council should subsequently grant the Institute a lease of part of the same property for a long term of years at nominal rent. A question having arisen whether the conveyance should be made to the Leeds City Council, or to the Lord Mayor, Aldermen, and Citizens of the City of Leeds (as constituting the City Corporation) a vendor and purchaser summons was taken out for its solution. On the one hand, it was contended that the City Council, and not the Corporation itself, was the properly-constituted Education Authority under the statute, and that only they could validly hold the land in mortmain, and validly grant the lease proposed. On the other hand, it

was argued that "the council of every . . . county borough" in sec. 1 must be construed as meaning "every county borough acting through its council."

Swinfen Eady J. held that "the council of every . . . county borough in sec. 1 was equivalent to "every county borough acting through its council." Land acquired for the purposes of the Local Education Authority should accordingly be conveyed to the Corporation and not to the Council.

Part II.

Higher Education.

Power to aid Higher Education.

2.—(1.) The Local Education Authority shall consider the educational needs of their area and take such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education, (1) and for that purpose shall apply all or so much as they deem necessary of the residue under section one of the Local Taxation (Customs and Excise) Act, 1890, (3) and shall carry forward for the like purpose any balance thereof which may remain unexpended, and may spend such further sums as they think fit: (3) . . . .

(2.) A council, in exercising their powers under this Part of this Act, shall have regard to any existing supply of efficient schools or colleges, and to any steps already taken for the purposes of higher education under the Technical Instruction Acts, 1889 and 1891 (2).

Additional Statutory Powers.

Since 1902 the powers of Local Education Authorities to aid higher education have been considerably enlarged by parliament. In 1907 they were enabled to purchase land either compulsorily or by agreement for the purposes of Part II. of the Act of 1902, and also to appropriate for those purposes land which had been acquired for purposes of elementary education. (Sec. 1, Education (Administrative Provisions) Act, 1907, p. 262.) Sec. 12 of the same Act (p. 270) provided that the power of a council under the Act of 1902 was not to be confined to persons resident in their area.

The power of taking joint action conferred upon Local Education Authorities by sec. 3 of the Education (Administrative Provisions) Act, 1909 (p. 336), has been enlarged by the Education Act, 1918, see sec. 2 (1) (*c*) (p. 347); and sec. 6. (p. 355).

By sec. 1 of the Education (Choice of Employment) Act, 1910 (p. 340), as amended by sec. 22 of the Education Act, 1918, p. 384, the councils of counties and county boroughs are empowered, subject to the approval of the Board of Education, to make arrangements for giving to boys and girls under eighteen years of age assistance and advice with respect to the choice of suitable employment.

Sec. 3 of the Education Act, 1918 (p. 350), will make it the duty of the Local Education Authority, either separately or in combination with other Local Education Authorities, to establish and maintain, or secure, the establishment and maintenance under their control and direction,

of a sufficient supply of continuation schools in which suitable courses of study, instruction, and physical training are provided without payment of fees for all young persons resident in their area who will be under the Act of 1918 (see sec. 10, p. 364), under an obligation to attend such schools.

Sec. 17 of the Education Act, 1918 (p. 378), enables Local Education Authorities for both higher and elementary education to make arrangements, with the approval of the Board of Education, to supply or maintain or aid the supply or maintenance of holiday or school camps; centres and equipment for physical training, playing fields, school baths, school swimming baths, and other facilities for social and physical training in the day or evening.

Sec. 18 of the Act of 1918 (p. 379), gives to the local authorities for higher education powers and duties with reference to making provision for the medical inspection and treatment of children and young persons attending (*a*) secondary schools provided by them (*b*) certain schools to the governing bodies of which payments are made under the Welsh Intermediate Education Act, 1889 (*c*) continuation schools under their direction and control (*d*) and such other schools or educational institutions (not being elementary schools) provided by them as the Board of Education direct.

Sec. 23 of the Act of 1918 (p. 384), gives power to higher education authorities to aid teachers and students to carry on any investigation for the advancement of learning or research in or in connection with educational institutions.

Sec. 7 of the Act of 1918 (p. 358), removed the limit under sec. 2. of the Education Act, 1902, on the amount which could be raised by the council of a county out of rates for the purpose of education other than elementary.

Note 2.—(1.) The provisions of subsec. (1) of sec. 2 of the Education Act, 1902, must be read in connection with secs. 1, 4 and 5 of the Education Act, 1918.

The Local Education Authority for higher education—that is to say, the council of every county and county borough—had imposed on them the duty of considering the educational needs of their area, and of taking such steps as seemed to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education.

Although the Local Education Authority were required to consult with the Board of Education as to the steps which might be taken, it rested exclusively with the Local Education Authority to determine what those steps should be. The Act conferred no such powers on the Board of Education to compel action by the Local Education Authority with regard to higher education as they had with respect to elementary education. This is altered by the Education Act, 1918: sec. 1 of the latter Act makes it the duty of the council of every county and county borough, so far as their powers extend, to provide for the progressive development and comprehensive organisation of education in their area. They may, and when required by the Board of Education, must submit to that Board schemes showing the mode in which their duties and powers under the Education Acts are to be performed and exercised, whether separately or in co-operation with other authorities (p. 346). Sec. 4 (p. 352), lays down certain lines on which schemes are to be considered, prepared and submitted to the Board of Education, and under sec. 5 (p. 354), that Board may approve any scheme submitted to them under that Act by a Local Education Authority, and on approval being given, it becomes the duty of the authority to give effect to the scheme. If the Board are not satisfied with the scheme and they

are unable to agree with the authority as to the amendments in it which should be made, they must offer to hold a conference with the representatives of the Local Education Authority, and at the request of the latter they must hold a public inquiry. If thereafter the Board disapprove the scheme, they must report to Parliament their reasons and any action they intend to take in consequence thereof by way of withholding or reducing any grants payable to the authority.

The powers of the Local Education Authority under sec. 2 of the Act of 1902 are extended by other provisions of that Act.

Under sec. 22 (3) the power to supply or aid the supply of education other than elementary includes a power to train teachers, and to supply or aid the supply of any education, except where that education is given at a public elementary school. Under sec. 23 (2) it includes power to make provision for supplying or aiding the supply of education other than elementary outside their area where they consider it expedient to do so in the interests of their area, and also includes the power to provide or assist in providing scholarships for and to pay and assist in paying the fees of students at schools or colleges or hostels within or without that area.

"Colleges" include any educational institution, whether residential or not.

As to hostels, the Attorney-General, in reply to a question whether the term "educational institution" included hostels where no lectures were given, but where students lived, if they were affiliated to some other institution to which the students went by day for the purpose of lectures, said, A hostel which is simply a boarding house is not included in the term "college." When the hostel is affiliated to an educational institution, no question would arise, because then it would be part of a whole and would be an educational institution (Parl. Debates (1902), vol. 14, 1067).

The powers of the Local Education Authority for higher education further include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending school or college whenever the council consider that the circumstances of their area or any part of it require this (sec. 23 (1)). See notes on the section referred to.

As to religious instruction and worship in schools, colleges, and hostels aided or provided by the Local Education Authority under the powers conferred by this section, see sec. 4.

The intention of the Act of 1902 was that there should be as far as practicable a clear line of distinction between the higher education and the elementary education for which it provides. This has to some extent been modified by the provisions for co-operation and combination in the Education Act, 1918, but the intention is still maintained generally; see sec. 10 of the Education (Administrative Provisions) Act, 1907, (p. 269), which provides that if any question arises whether any purpose for which a council wish to exercise any powers under the Education Acts is a purpose of Part II. of the Act of 1902 or of Part III. of that Act, that question shall be referred to and determined by the Board of Education and their decision shall be conclusive on the matter. It should be noted that the Act of 1907 is included with the Education Acts, 1870 to 1916 and that the Education Act, 1918, is to be read as one with those Acts (sec. 52 (1) Education Act, 1918, p. 437).

Sec. 2 (1) of the Education Act, 1902, provides that the Local Education Authority shall consider the educational needs of their area and take such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and for that purpose the section authorises the expenditure of money. The Local Government Board have stated

that in correspondence which has taken place between them and the Board of Education the Board of Education expressed the opinion that the powers given to Higher Education Authorities by the above enactment enable them to incur expenditure on the technical or professional instruction of women in order to prepare them to become skilled midwives, and also that in view of sec. 23 (2) of the Act such expenditure may take the form of providing scholarships for or paying the fees of students at training institutions. Any payment which a Local Education Authority might make in the matter would, of course, have to come before the district auditor for his decision as to its legality and reasonableness. (Local Government Chronicle, 23rd March, 1912.)

Evening schools are not to be carried on by the Local Education Authority as the authority for elementary education (see sec. 22 (1.) p. 203), but by the authority for higher education who are the authority for the continuation schools to be established under the Education Act, 1918 (see sec., 3 p. 350). The provisions of the latter Act enabling combination and co-operation of authorities must be borne in mind: see especially sec. 2 (1) (*c*) on p. 347.

There is also a limit of the age of children to whom instruction is to be given in a public elementary school under the Elementary Education Acts; for exceptions (see sec. 22 (2) and the notes thereto).

(2.) The Technical Instruction Acts, 1889 and 1891 were repealed by the Act of 1902; but the provisions of Part II. of this Act (as to higher education) apply to any school, college, or hostel established, and to any obligation incurred under those Acts as if the school, college, or hostel had been established or the obligation had been incurred under Part II. of this Act. References in any enactment or in any provision of a scheme under the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, to any provisions of the Technical Instruction Acts or either of those Acts, unless the context otherwise requires, are to be construed as references to Part II. of this Act. (Sch. III. (11)).

In Smerkinich v. *Newport Corporation* (10 L. G. R. 959), a Local Education Authority provided and maintained a technical institute for evening pupils under a competent instructor whose permission was necessary before the pupils might use the mechanical appliances. A pupil, aged nineteen, a carpenter's apprentice, obtained permission to use a circular saw driven by electricity and in so doing he injured his hand. He had been shewn how to use the saw: he had used it often and he knew that it was dangerous. The saw was not protected in any way whatever from the rear, the side, or the front. Evidence was given to show how it might be protected but there was no evidence at all conclusive as to a general practice of protecting such saws. It was argued that under the Education Act, 1902, the Local Education Authority were bound to maintain an efficient school and that a technical institute fell within that category. The Court was not satisfied that it was the duty of the Local Education Authority to provide protection for the saw. On the ground, however, that the plaintiff was well acquainted with the use of a circular saw; that he knew perfectly well the risk he ran, and that he voluntarily incurred it, the King's Bench Division allowed the appeal from the County Court Judge, who had found for the plaintiff.

(3.) As regards the funds available to the Local Education Authority for their expenditure in the supply of, or in aiding the supply of, higher education, the receipts first referred to are those under the Local Taxation (Customs and Excise) Act, 1890. Under that Act certain duties on spirits and beer received by the Board of Inland Revenue are paid into "the Local Taxation Account" at the Bank of England, and out of the English share of the duties so paid in a sum of £300,000 is paid by the Local Government Board towards police superannuation, and the

residue is paid by that Board to the councils of counties and county boroughs, the amounts being distributed as if this residue were part of the English share of the local taxation probate duty. The Act provided that the council of any county or county borough might contribute any sum received by them in respect of the residue referred to, or any part of that sum, for the purposes of technical instruction within the meaning of the Technical Instruction Act, 1889, and might make that contribution over and above any sum that might be raised by rate under that Act. There was no obligation on the councils to thus apply these moneys, but in later years nearly the whole of the amount has been used for this purpose. The present Act contemplates that the full sum which may be received by the council of a county or county borough shall be applied towards the expenses of supplying or aiding the supply of higher education, although not necessarily in the year in which it may be received. If in any year the council do not deem it necessary to apply the full amount to this purpose they are not required to do so, but any balance which may remain unexpended is to be subsequently so applied.

The Local Education Authority may also spend for the purpose of the powers above referred to such further sums as they think fit. But the amount which the council of a county may raise for this purpose in any one year out of rates under the Act is no longer limited to twopence in the pound or such higher rate as the council, with the consent of the Local Government Board, may fix. That limit is removed by sec. 7 of the Act of 1918 and there is no limitation of the rate which may be raised for the purpose by the council of a county or county borough.

The rate in the case of a county, subject to the exception provided for by sec. 18 (1) (*a*), will be levied by the county council throughout their county, inclusive of non-county boroughs and urban districts, and the powers of rating for the purpose of education other than elementary which is conferred by sec. 3 on the councils of the boroughs and districts referred to, are powers which may be exercised concurrently with those of the county council.

As to relinquishment of powers by the council of a non-county borough or of an urban district, see notes on secs. 3 and 20 (*b*).

The question arises whether when there is such relinquishment the council of the county can levy on the borough or district an amount which would be produced by a rate of one penny in the pound in addition to the rate of twopence or the higher rate in the pound provided for by this section. As to this, see note on sec. 3.

Under sec. 18 (1) (*a*) the county council may, if they think fit (after giving reasonable notice to the overseers of the parish or parishes concerned), charge any expenses incurred by them under the Act, with respect to education other than elementary to any parish or parishes which in the opinion of the council are served by the school or college in connection with which the expenses have been incurred.

In connection with the question of higher education, see also the provisions in sec. 3 of the Board of Education Act, 1899; sec. 4 of that Act, as amended by sec. 16 of the Education (Administrative Provisions) Act, 1907, as to inspection of secondary schools.

With respect to expenses incurred by a Local Education Authority under this section, see sec. 18; and as to borrowing powers, see sec. 19.

Sec. 20 (*a*) provides that arrangements may be made with the council of any county, borough, district or parish, whether a Local Education Authority or not, for the exercise by the council, on such terms and subject to such conditions as may be agreed on, of any powers of a council under the Act in respect of the management of any school or college within the area of the council.

See also the provisions in Sch. III. (12) as to the power of the Local Government Board by order to make such adaptations in the

provisions of local Acts as may seem to them to be necessary to make those provisions conform with the provisions of this Act.

The powers of the Local Government Board in respect of the matters referred to above have passed to the Minister of Health.

Concurrent Powers of Smaller Boroughs and Urban Districts.

3. The council of any non-county borough or urban district shall have power as well as the county council to spend such sums as they think fit for the purpose of supplying or aiding the supply of education other than elementary: Provided that the amount raised by the council of a non-county borough or urban district for the purpose in any year out of rates under this Act shall not exceed the amount which would be produced by a rate of one penny in the pound.

Powers.

Note 3.—This section follows the lines of the Technical Instruction Act, 1889, repealed by the Act of 1902. Under that Act the councils of boroughs and urban districts were empowered to supply or aid the supply of technical and manual instruction, and to raise for that purpose a rate not exceeding one penny in the pound.

Except as to the limitation under this section of the amount to be raised in any one year out of rates, the council of a non-county borough or urban district, as such, but not in its capacity of Local Education Authority under the Act, have the same powers as the council of a county for the purpose of supplying or aiding the supply of education other than elementary. As regards those powers, see note on sec. 2.

The amount which would be produced by a rate of one penny in the pound is to be estimated in accordance with regulations made by the Local Government Board (sec. 23 (4)). Those regulations are contained in an order dated 22nd August, 1903.

Duty.

The council of a non-county borough or urban district have no absolute duty imposed on them to supply or aid the supply of higher education. The section confers on them the power to do so, and to expend such sums as they think fit for the purpose, subject to the limit of rating. The only exception is when the council have already incurred under the repealed Technical Instruction Acts liabilities which are still outstanding, and for which provision must be made.

Rating.

As previously stated, the powers of rating by the council of a non-county borough or urban district will be concurrent with those of the council of the county. The fact that the council of the borough or district levy a rate in their own area for purposes of higher education does not affect the right of the county council also to levy a rate for like purposes in that area.

The council of a non-county borough or urban district can, however, under sec. 20 (*b*) by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council their powers under this section, and in that case the powers of the authority so relinquished cease. They cannot be relinquished temporarily and then resumed.

The Board of Education appear to consider that when any council thus relinquish their powers under the section, the provision referred to gives the county council the power to levy in the borough or district a rate of like amount to that which the council of the borough

or district might have levied under the section, in addition to the rate which the county council can raise under sec. 2. The Board, in their memorandum on the Act (circular 470), gave as items of the main sources of income of a county council for higher education . . .

"(2) The county rate, . . .

"(4) Where a borough or urban district which is a Local Education Authority relinquishes to the county its powers under Part II. of the Act for that borough or district, an additional rate not exceeding one penny in the pound.

Where the council, under the provision above referred to, relinquish their powers and duties in favour of a county council, any property or rights acquired, and any liabilities incurred for the performance of the powers and duties relinquished, including any property or rights vested or arising, or any liabilities incurred under any local Act or trust deed are transferred to the county council. Sch. II. (2.)

Expenses.

With respect to the expenses of a council under this section, see sec. 18; and as to their borrowing powers, see sec. 19.

See also Sch. III. (12) as to the powers of the Local Government Board (now the Minister of Health) by order to make such adaptations in the provisions of any Local Act as may seem to them to be necessary to make those provisions conform with the provisions of this Act.

Religious Instruction.

4.—(1.) A council, in the application of money under this Part of this Act, shall not require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used, or practised in any school, college, or hostel aided but not provided by the council, and no pupil shall, on the ground of religious belief, be excluded from or placed in an inferior position in any school, college, or hostel provided by the council, and no catechism or formulary distinctive of any particular religious denomination shall be taught in any school, college, or hostel so provided, except in cases where the council, at the request of parents of scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college, or hostel, otherwise than at the cost of the council: Provided that in the exercise of this power no unfair preference shall be shown to any religious denomination. (1)

(2.) In a school or college receiving a grant from, or maintained by, a council under this Part of this Act,

(*a*) A scholar attending as a day or evening scholar shall not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday school, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere; and

(*b*) The times for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any such scholar therefrom. (2)

Note 4.—(1.) The first part of this sub-section refers to schools, colleges, or hostels aided but not provided by the councils of counties and county boroughs under sec. 2 of the Act, and the councils of non-county boroughs and urban districts under sec. 3, and the second part to schools, colleges, and hostels provided by councils under those sections.

For definition of the terms "colleges" and "hostels," see note on p. 127.

As regards schools, colleges, or hostels aided but not provided by councils, the council in the application of money available for purposes of higher education are not to require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall or shall not be taught, used, or practised in any such school, college, or hostel. It will therefore rest with those who have the management of such institutions, subject to any trusts on which they are held, to determine whether or not they shall be conducted on Church of England or other denominational lines.

With respect to schools, colleges, or hostels provided by the council no pupil is to be excluded therefrom or placed in an inferior position therein on the ground of his religious belief. Further, no catechism or formulary distinctive of any particular religious denomination is to be taught in the institution, except in cases where the council, at the request of parents or scholars, at such times and under such conditions as the council think desirable, allow any religious instruction to be given otherwise than at the cost of the council; but when the council exercise this power no unfair preference is to be shown to any religious denomination.

(2.) The provision in this sub-section refers to schools and colleges, receiving a grant from as well as those maintained by a council for the purpose of education other than elementary, and applies to scholars attending such schools or colleges either as day or evening scholars.

As to the power of a young person under the age of sixteen, or the parent of such a young person, to object to the instruction in a continuation school which the young person is requested to attend on the ground that such instruction is contrary or offensive to his religious belief, see sec. 10 (9) of the Education Act, 1918, p. 367.

Part III.

If any question arises whether any purpose for which a council wish to exercise powers under the Education Acts is a purpose of Part II. of the Education Act, 1902, *or of Part III. of that Act, that question shall be referred to and determined by the Board of Education, and their decision shall be conclusive of the matter* (*Education* (*Administrative Provisions*) *Act,* 1907, *sec.* 10, p. 269).

Elementary Education.

Powers and Duties as to Elementary Education.

5. The Local Education Authority shall throughout their area have the powers and duties of a school board and school

attendance committee under the Elementary Education Acts, 1870 to 1900, and any other Acts, including local Acts, and shall also be responsible for and have the control of all secular instruction in public elementary schools not provided by them, and school boards and school attendance committees shall be abolished.

Additional Statutory Powers.

By the Education (Provision of Meals) Act, 1906, as extended by the Education (Provision of Meals) Act, 1914, Local Education Authorities may provide food for children attending public elementary schools, on days when the schools meet and on other days (pp. 257 and 345).

By sec. 11 of the Education (Administrative Provisions) Act, 1907 (p. 270), the powers and duties of a Local Education Authority under Part III. of the Education Act, 1902, include a power to aid by scholarship or bursaries the instruction in public elementary schools of scholars from the age of twelve up to the limit of age fixed by sec. 22 of that Act (as amended), but the limit may be extended (see. p. 270.)

By sec. 13 (1) (*a*) of the Education (Administrative Provisions) Act, 1907, provision may be made for children attending public elementary schools, vacation schools, vacation classes, play centres, or other means of recreation during their holidays or at such other times as the Local Education Authority may prescribe (see p. 271). This power is extended by sec. 17 of the Education Act, 1918 (see p. 378), to enable the Local Education Authority to make arrangements to supply or maintain or aid the supply of or maintenance of (*a*) holiday or school camps; (*b*) centres and equipment for physical training, playing fields (other than the ordinary playgrounds of public elementary schools not provided by the Local Education Authority), school baths, school swimming baths and (*c*) other facilities for social and physical training in the day or evening.

Sec. 13 (1) (*b*) of the Education (Administrative Provisions) Act, 1907 imposes a duty to provide for the medical inspection of children immediately before or at the time of, or as soon as possible after their admission to a public elementary school and on other occasions; and the *power* to make such arrangements as may be sanctioned by the Board of Education for attending to the health and physical condition of the children educated in public elementary schools. The power was converted into a duty by sec. 2 (1) (*b*) of the Education Act, 1918, see p. 347. By sec. 25 of the Act of 1918 (p. 385), these arrangements must not extend to the establishment of a general domiciliary service of treatment by medical practitioners for children; but the Local Education Authority are to consider how far they can avail themselves of the services of private medical practitioners.

Sec. 1 of the Education (Administrative Provisions) Act, 1911, gives a right to receive payment under contribution orders made by the Board of Education for the education of children coming from the area of some other Local Education Authority.

By sec. 31 of the Mental Deficiency Act, 1913, the Local Education Authority have the duty, subject to the approval of the Board of Education, of making arrangements for ascertaining what children within their area are defective children within the meaning of that Act, and which of them are incapable of receiving benefit from special instruction; and also for giving the specified notices to the local authority under the Mental Deficiency Act, see p. 468.

By sec. 2 of the Education Act, 1918 (p. 347), it becomes the duty of a Local Education Authority to exercise their powers under Part III. of the Act of 1902, so as to secure adequate and suitable provisions

(1) for including in the curriculum of public elementary schools at appropriate stages practical instruction (defined in sec. 48 p. 426), suitable to the ages, abilities and requirements of the children; and (2) for organising in those schools courses of advanced instruction for the older or more intelligent children; and also for co-operating with Local Education Authorities dealing with higher education in matters of common interest, particularly the preparation of children for further education in schools other than elementary, and their transference at suitable ages to such schools; and in respect of the supply and training of teachers.

By sec. 9 (2) of the Education Act, 1918, the Part III. Authority may make regulations with the approval of the Board of Education providing that children may in the prescribed cases be refused admission to public elementary schools except at the commencement of a school term.

By sec. 19 of the Education Act, 1918 (p. 381), there is power to make arrangements for supplying or aiding the supply of nursery schools for children over 2 and under 5 years of age (and in certain cases older children) and attending to the health, nourishment and physical welfare of those children.

Sec. 21 of the Education Act, 1918 (see p. 383), gives among other things the power of providing board and lodging for the purpose of enabling children to receive efficient elementary education in cases where they could not receive it owing to the remoteness of their homes, the conditions under which they are living, or other exceptional circumstances affecting the children.

Sec. 35 of the Education Act, 1918 (p. 403), gives power to provide, with the consent of the Board of Education, public elementary schools outside their area for the use of children living within it.

Sec. 39 of the Education Act, 1918 (p. 407), gives power to prosecute under sec. 12 of the Children Act, 1908, any person over sixteen years of age, for cruelty to a child in his custody or care, of the kind indicated in the section (see pp. 408-8), and to pay the expenses of the prosecution.

Powers and Duties Transferred.

Note 5.—The Local Education Authorities have conferred on them all the powers and duties of a school board and school attendance committee under the Elementary Education Acts, 1870 to 1900, and any other Acts, including local Acts. They have not merely the powers and duties of a school board in a district where there has been a school board and those of a school attendance committee in a district which has been under the jurisdiction of a school attendance committee, but they have vested in them all the powers and duties both of a school board and of a school attendance committee "throughout their area."

At the same time the Local Education Authority are not the same as a school board which they replaced, inasmuch as the new authority is differently constituted and is elected by a different constituency: see *In re Beard's Trusts* (1904, 1 Ch. 270; 2 L. G. R. 320).

The Education Acts, so far as they are unrepealed, with other Acts relating to them, are given in the following pages as they will apply throughout the areas under the jurisdiction of the Local Education Authorities, the modification made by this and subsequent Acts, being shown either in the sections or in the notes to the sections. As to the modifications made by this Act, see Sch. III. (1 to 9), p. 227.

In the case of the Elementary Education (Blind and Deaf Children) Act, 1893, and the Elementary Education (Defective and Epileptic Children) Act, 1899, *post*, the school authorities for the purpose of those Acts were the school board in a district where there was a school board, and in other districts either the council of the borough or the

council of an urban district other than a borough, or the council of the rural district. The Local Education Authorities take the place of and succeed to the powers and duties of the school authorities under those Acts.

With respect to the transfer to the Local Education Authority of the powers and duties of a school board under a local Act it will be observed from Sch. III. (12) that the Minister of Health may, after consultation with the Board of Education, make such adaptations in the provisions of any local Act (including any Act for the confirmation of a provisional order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act, as may seem to them to be necessary to make those provisions conform with the provisions of this Act.

Mode of Exercising the Powers.

By sec. 17 of the Act of 1902 all matters relating to the exercise by the council of their powers under the Act, except the power of raising a rate or borrowing money, stand referred to the education committee (urgent matters may be excepted), but notwithstanding this delegation of powers the Local Education Authority will be responsible for the due performance of the duties entrusted to them, and in the event of a failure to fulfil these duties, the proceedings under sec. 16 for enforcing the performance of the duty would be against the Local Education Authority and not against the education committee.

The entire control of the public elementary schools provided by the Local Education Authority will necessarily be vested in them, subject to delegation of powers to the education committee.

For definition of the term "public elementary school," and as to the schools which are to be treated as provided by the Local Education Authority, see notes on sec. 6.

Managers appointed for these schools under sec. 6 will only have authority to deal with such matters relating to the management of the school, and subject to such conditions and restrictions as the Local Education Authority determine.

In the case of a public elementary school not provided by the Local Education Authority, the authority are responsible for and have the control of all secular instruction. They are also to maintain and keep efficient any such school within their area which is necessary, and to have the control of all expenditure required for that purpose other than expenditure for which, under the Act, provision is to be made by the managers, but only so long as the conditions and provisions specified in sec. 7 are complied with. See notes on that section.

The Local Education Authority, in the case of a non-county borough or urban district may, under sec. 20 (*b*), by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the county their powers and duties under the Act with regard to elementary education, and in that case the powers and duties so relinquished cease, and the area of the authority as respects those powers becomes part of the area of the county. Such relinquishment cannot be temporary only; it would have effect permanently. Sch. II. (2) provides for the transfer to the council of the county of any property or rights acquired and any liabilities incurred for the performance of the powers and duties relinquished.

Expenses.

With reference to the expenses of the Local Education Authority, under this part of the Act, see sec. 18; and as to powers of borrowing see sec. 19.

The transfer of powers from school boards, school authorities, and school attendance committees to the Local Education Authorities

renders necessary incidental and consequential provisions, such as those relating to transfer of property and officers and adjustment. These are dealt with in Sch. II. to the Act, p. 217.

Management of Schools.

6.—(1.) All public elementary schools provided by the Local Education Authority shall, where the Local Education Authority are the council of a county, have a body of managers consisting of a number of managers not exceeding four appointed by that council, together with a number not exceeding two appointed by the minor local authority.

Where the Local Education Authority are the council of a borough or urban district they may, if they think fit, appoint for any school provided by them a body of managers consisting of such number of managers as they may determine.

Sub-sec. (1) of sec. 6 does not apply to London. See sec. 2 (1) of the Education (London) Act, 1903, and the provisions as to management of schools in Sch. I. (3) of that Act, p. 236. See also Sch. I., paras. 9, 10 and 11, p. 216.

(2.) All public elementary schools not provided by the Local Education Authority shall, in place of the existing managers, have a body of managers consisting of a number of foundation managers not exceeding four appointed as provided by this Act, together with a number of managers not exceeding two appointed—

(*a*) Where the Local Education Authority are the council of a county, one by that council and one by the minor local authority ; and

(*b*) Where the Local Education Authority are the council of a borough or urban district, both by that authority.

(3.) Notwithstanding anything in this section—

(*a*) Schools may be grouped under one body of managers in manner provided by this Act ; and

(*b*) Where the Local Education Authority consider that the circumstances of any school require a larger body of managers than that provided under this section, that authority may increase the total number of managers, so, however, that the number of each class of managers is proportionately increased.

Modification of Section 6.

Notwithstanding the provisions of sec. 6 of the Education Act, 1902, or in the case of London sec. 2 (1) of the Education (London) Act, 1903, as to the appointment of managers, the provisions of sec. 32 of the Education Act, 1918, relating to central schools and classes may be observed (see p. 393). By clause 11 of Sch. I. to the London Act, 1903, a manager of a public elementary school provided by the London Education Authority is not to be appointed for a longer period than three years, but he may be re-appointed.

Public Elementary Schools.

Note 6.—The term "public elementary school" is defined in secs. 5 and 7 of the Education Act, 1870, as amended, see pp. 2 and 6.

The term does not include any school carried on as an evening school under the regulations of the Board of Education (see sec. 22). In order that an elementary school may be a "public elementary school" the school must be conducted in accordance with certain regulations with regard to religious observances and instruction in religious subjects, and it must at all times be open to the inspection of any of His Majesty's Inspectors of Schools. The school must also be conducted in accordance with the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant. As to these regulations and conditions, see the Education Act, 1870, secs. 7 and 14, and notes thereon: see pp. 6 and 9.

The section refers to two classes of schools—schools provided by the Local Education Authority and schools not so provided. Schools provided by school boards, and transferred to the Local Education Authority, as well as schools which that authority may themselves provide, are to be treated as schools provided by the Local Education Authority. Schools which are deemed to have been provided by a school board are also to be deemed to have been provided by the Local Education Authority (see Sch. II. (13) to this Act). The schools referred to are (*a*) schools which under sec. 23 of the Education Act, 1870, have been transferred by the managers to a school board, that section providing that every school so transferred shall, to such extent and during such times as the school board have under the terms of transfer any control over the school, be deemed to be a school provided by the school board; and (*b*) schools connected with an endowment, charity, or trust of which the school board have been constituted the trustees under sec. 13 of the Education Act, 1873, that section providing that every such school shall be deemed to be provided by the school board.

Managers of Provided Schools.

As regards *public elementary schools provided by the Local Education Authority:*—

When the Local Education Authority are the *council of a county*, the school must have a body of managers consisting of a number of managers not exceeding four appointed by the council of the county, together with a number not exceeding two appointed by the minor local authority.

When the Local Education Authority are the *council of a borough or urban district*, they may appoint for the school a body of managers consisting of such number of managers as they may determine, but they are under no obligation to appoint managers for the school.

As regards the provision that in the case of a school provided by the council of a county as the Local Education Authority, a number of managers not exceeding two shall be appointed by the minor local authority, it will be observed from sec. 24 (2) that the expression "minor local authority" means as respects any school the council of any borough or urban district or the parish council or (where there is no parish council) the parish meeting of any parish which appears by the county council to be served by the school. Where it appears to the county council that the school serves the area of more than one minor local authority, the county council are to make such provision as they think proper for joint appointment of managers by the authorities concerned.

It is not necessary that the managers appointed by the minor authorities should be members of those authorites. The minor authorities are unrestricted in their selection of the persons to be appointed.

For rules as to meetings of parish councils and parish meetings, see Local Government Act, 1894, Sch. I.

Managers of Non-provided Schools.

With respect to *public elementary schools not provided by a Local Education Authority*, every such school is to have a body of managers, of which a number not exceeding four must be foundation managers. As to the appointment of foundation managers, see sec. 11. In addition to these foundation managers the body of managers is to include a number of managers not exceeding two who are to be appointed—

Where the Local Education Authority are the council of a county, one by the council and one by the minor local authority; and

Where the Local Education Authority are the council of a borough or urban district, both are to be appointed by the council.

Increasing the Number of Managers.

With respect to *an increase of the total number of managers of a school* where the Local Education Authority consider that the circumstances of the school require a larger body of managers than that provided by the section, the Board of Education, in their memorandum as to foundation managers, stated as follows: "Under the provisions of sec. 6 (3) (*b*), the Local Education Authority may increase the total number of managers, the foundation managers and local authority's managers being proportionately increased. In the circumstances to which sec. 6 (2) (*b*) of the Act applies (viz. where the Local Education Authority are the council of a borough or urban district), the number of managers of the two classes respectively might be six and three; but where the Local Education Authority are the council of a county, the number of managers must be increased (if increase is thought desirable) to eight and four respectively, or to some other multiple of four and two. It will probably be found in most cases that twelve is an inconveniently large number of managers. Orders of the Board under sec. 11 of the Act are so drawn as to meet the case of future increase in the number of managers."

Grouping of Schools.

As regards the exceptions to the provisions above referred to, *the grouping of schools* under one body of managers must be in accordance with sec. 12 of the Act, as extended by sec. 31 of the Education Act, 1918.

Women.—Tenure and Term of Office.

A woman is not disqualified by sex or marriage for being on a body of managers (sec. 23 (6)).

The Act contains no provision as to the period for which managers shall be appointed in the case either of foundation managers (see sec. 11) or of managers appointed by the Local Education Authority or the minor authority. Neither is there any provision as to the tenure of office of managers, except that in Sch. I., B (5), to the Act, which is to the effect that a manager of a school not provided by the Local Education Authority, appointed by that authority or by the minor local authority, shall be removable by the authority by whom he is appointed, and that any such manager may resign his office.

Powers and Duties of Managers.

The managers of a school provided by the Local Education Authority are to deal with such matters relating to the management of the school, and subject to such conditions and restrictions as the Local Education Authority determine (Sch. I., B (4)).

The managers of a school maintained but not provided by the Local Education Authority have all powers of management required for the purpose of carrying out the Act, and, subject to the powers of the Local Education Authority, have the power of appointing and dismissing

teachers (sec. 7 (1) (*a*) (*b*) (*c*), (5), and (7)). The powers of the Local Education Authority in this respect, however, have been extended by sec. 29 of the Education Act, 1918, which enacts that notwithstanding anything in the Education Act, 1902, the appointment of all teachers of secular subjects not attached to the staff of any particular elementary school and teachers appointed for the purpose of giving practical instruction (defined in sec. 48 of the Act of 1918), pupil teachers and student teachers shall be made by the Local Education Authority; and the provisions of sec. 7 (3) of the Act of 1902 are to apply to any question which arises under sec. 29 between the managers and the Local Education Authority in regard to such appointments (see p. 140).

The body of managers appointed for a public elementary school not provided by the Local Education Authority are the managers of that school for the purposes of the Elementary Education Acts, and, so far as respects the management of a school as a public elementary school, for the purpose of the trust deed (sec. 11 (6)).

With respect to the obligations devolving on the managers which must be fulfilled if the school is to receive a parliamentary grant, see sec. 7 (4), p. 140, and sec. 7, of the Education Act, 1870 (p. 6).

As to the powers of managers to fulfil the conditions required to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision contained in the instrument regulating the trusts or management of the school, see Sch. III. (7) to this Act, sec. 99 of the Education Act, 1870, and the Education (Compliance with Conditions of Grants) Act, 1919, p. 443.

With regard to the audit of the accounts when managers are entrusted by the Local Education Authority with any receipts or payments of money under the Act. see sec. 18 (5).

Maintenance of Schools.

7.—(1.) The Local Education Authority shall maintain and keep efficient all public elementary schools within their area which are necessary, and have the control of all expenditure required for that purpose, other than expenditure for which, under this Act, provision is to be made by the managers; (1) but, in the case of a school not provided by them, only so long as the following conditions and provisions are complied with:—

(*a*) The managers of the school shall carry out any directions of the Local Education Authority as to the secular instruction to be given in the school, including any directions with respect to the number and educational qualifications of the teachers to be employed for such instruction, and for the dismissal of any teacher on educational grounds, and if the managers fail to carry out any such direction the Local Education Authority shall, in addition to their other powers, have the power themselves to carry out the direction in question as if they were the managers; but no direction given under this provision shall be such as to interfere with reasonable facilities for religious instruction during school hours; (2)

(*b*) The Local Education Authority shall have power to inspect the school; (3)

(*c*) The consent of the Local Education Authority shall be required to the appointment of teachers, but that consent shall not be withheld except on educational grounds ; and the consent of the authority shall also be required to the dismissal of a teacher unless the dismissal be on grounds connected with the giving of religious instruction in the school ; (2)

(*d*) The managers of the school shall provide the schoolhouse free of any charge, except for the teacher's dwelling-house (if any), to the Local Education Authority for use as a public elementary school, and shall, out of funds provided by them, keep the schoolhouse in good repair, and make such alterations and improvements in the buildings as may be reasonably required by the Local Education Authority ; Provided that such damage as the local authority consider to be due to fair wear and tear in the use of any room in the schoolhouse for the purpose of a public elementary school shall be made good by the Local Education Authority. (4)

(*e*) The managers of the school shall, if the Local Education Authority have no suitable accommodation in schools provided by them, allow that authority to use any room in the schoolhouse out of school hours free of charge for any educational purpose, but this obligation shall not extend to more than three days in the week. (5)

(2.) The managers of a school maintained but not provided by the Local Education Authority, in respect of the use by them of the school furniture out of school hours, and the Local Education Authority in respect of the use by them of any room in the schoolhouse out of school hours, shall be liable to make good any damage caused to the furniture or the room, as the case may be, by reason of that use (other than damage arising from fair wear and tear), and the managers shall take care that, after the use of a room in the schoolhouse by them, the room is left in a proper condition for school purposes. (6)

(3.) If any question arises under this section between the Local Education Authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education. (7)

(4.) One of the conditions required to be fulfilled by an elementary school in order to obtain a parliamentary grant shall be that it is maintained under and complies with the provisions of this section. (8)

(5.) In public elementary schools maintained but not provided by the Local Education Authority, assistant teachers and pupil teachers may be appointed, if it is thought fit, without reference to religious creed and denomination, . . . (9).

(6.) Religious instruction given in a public elementary school not provided by the Local Education Authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed relating thereto, and shall be under the control of the managers: Provided that nothing in this sub-section shall affect any provision in a trust deed for reference to the bishop or superior ecclesiastical or other denominational authority so far as such provision gives to the bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed. (10)

(7.) The managers of a school maintained but not provided by the Local Education Authority shall have all powers of management required for the purpose of carrying out this Act, and shall (subject to the powers of the Local Education Authority under this section) have the exclusive power of appointing and dismissing teachers. (11)

Additional Statutory Powers.

Sec. 8 (6) of the Education Act, 1918, provides as follows :—

The power of a Local Education Authority under sec. 7 of the Education Act, 1902, to give directions as to secular instruction shall include the power to direct that any child in attendance at a public elementary school shall attend during such hours as may be directed by the authority at any class, whether conducted on the school premises or not, for the purpose of practical or special instruction or demonstration, and attendance at such a class shall, where the Local Education Authority so direct, be deemed for the purpose of any enactment or bye-law relating to school attendance to be attendance at a public elementary school.

Provided that, if by reason of any such direction a child is prevented on any day from receiving religious instruction in the school at the ordinary time mentioned in the time-table, reasonable facilities shall be afforded, subject to the provisions of sec. 7 of the Elementary Education Act, 1870, for enabling such child to receive religious instruction in the school at some other time.

(See the notes on this sub-sec. on pp. 7-9).

Sec. 29 of the Education Act, 1918, provides as follows :—

29 (1.) Notwithstanding anything in the Education Act, 1902, the appointment of all teachers of secular subjects not attached to the staff of any particular public elementary school and teachers appointed for the purpose of giving practical instruction, pupil teachers, and student teachers, shall be made by the Local Education Authority, and it is hereby declared that the Local Education Authority have power to direct the managers of any public elementary schools not provided by them to make arrangements for the admission of any such teachers to the schools.

(2.) The provisions of sec. 7 (3) of the Education Act, 1902, shall apply to any question which arises under this section between the Local Education Authority and the managers of a school.

Sec. 30 of the Education Act, 1918, provides that if managers of a non-provided public elementary school wish to close the school, eighteen months' notice to the Local Education Authority shall be given by them of the intention to do so. Provision is also made to enable the Local Education Authority to have the use of the school under certain speci-

fied conditions, if the managers are unable or unwilling to carry on the school up to the expiration of the period specified in the notice (see sec. 30 on p. 391).

Note 7.—(1.) For a definition of public elementary school see secs. 3 and 7 of the Education Act, 1870, pp. 2 and 6.

With regard to the powers of a Local Education Authority to provide school accommodation in public elementary schools, see the Education Act, 1870, secs. 5, 18, and 19, and secs. 8, 9, 16, and Sch. III. (6) of the present Act. As to the acquisition of sites for schools, see sec. 20 of the Education Act, 1870; sec. 34 of the Education Act, 1918, p. 395.

The authority cannot maintain and keep efficient schools which are "not necessary"; and sec. 9 of this Act enables the Board of Education to determine, in case of dispute, whether a school is necessary or not. Under sec. 98 of the Education Act, 1870, p. 71, the Board of Education may in the case of a school that has not previously been in receipt of a parliamentary grant, refuse a grant to a school which they think is unnecessary.

The power of maintenance under this section is limited to public elementary schools within the area of the Local Education Authority; but by sec. 35 of the Education Act, 1918, p. 403, an authority may with the consent of the Board of Education, after consulting the authority of the area in which the proposed site is situated, provide and maintain a public elementary school, in cases where it appears convenient to do so, on a site outside their area for the use of children within their area.

Children may, in certain circumstances, receive education outside the area in which they reside, and power is given to the Board of Education to make a contribution order on the Local Education Authority in which the children reside to pay such sum as the Board think proper to the Education Authority of the district in which they receive education (sec. 1, Education (Administrative Provisions) Act, 1911, p. 341).

As regards London, any public elementary school provided by the London School Board before the 14th August, 1903, which was wholly or partly outside the county of London, is, for the purposes of the Education (London) Act, 1903, to be treated as wholly within the county of London and within the nearest metropolitan borough (sec. 3, Education (London) Act, 1903). All such schools have to be maintained by the London County Council as the Local Education Authority.

Maintenance, &c.

The managers of a voluntary school appointed under the Education Act, 1902, have not, in the absence of a special arrangement with the owner, such possession of the school building as will support an action for trespass. They have merely certain statutory rights over the building, and such rights only as will enable them to perform their statutory duties:—*Blencowe* v. *Northamptonshire County Council* (1907), 1 Ch. 504; 5 L. G. R. 551.

The Local Education Authority may, but are under no obligation to, maintain as a public elementary school any marine school or any school which is part of or is held on the premises of any institution in which children are boarded (sec. 15).

The meaning and scope of the word "maintain" was discussed in *Attorney General and Board of Education* v. *West Riding of Yorks County Council* which was ultimately decided by the House of Lords (1907, A.C. 29). There it was held that a Local Education Authority does not "maintain" a non-provided school as required by the Education Act, 1902, sec. 7 (1) if it refuses to pay what is reasonable for denominational religious instruction lawfully given during school hours. In order to maintain a school, in which the law allows the managers

to make religious instruction a part of the curriculum, the Local Education Authority must take the school as it is and bear the cost of the whole. The authority has nothing to do with the "efficiency" of the religious instruction given, for the words "keep efficient" relate only to secular subjects. Moreover, the managers cannot spend what they please on religious instruction, and require the Local Education Authority to pay the bill whatever it may be. For the latter have the control of the expenditure for the purpose, subject to the arbitrament of the Board of Education (Lord Loreburn L.C., on pp. 36 and 37). In the result the House of Lords directed the Local Education Authority to pay the amount of the teachers' salaries for the time spent in giving religious or denominational instruction during school hours in four non-provided schools.

It is clear from this case that a Local Education Authority must not discriminate between provided and non-provided schools. Both are to be treated alike (per Lord Davey, 1907, A.C., on p. 38).

The House of Lords have decided that the duty of maintaining and keeping efficient all public elementary schools within their area, imposed by sec. 7 (1) of the Education Act, 1902, does not extend to cleaning and keeping in order the buildings of a non-provided school and that therefore the managers of such a school have the right and duty of appointing the necessary caretakers and cleaners. *Gillow* v. *Durham County Council* (1913), A.C. 54; 107 L. T. 689; 11 L. G. R. 1. See also the case of *Wilford* v. *West Riding of Yorkshire County Council*, on p. 147.

In *Board of Education* v. *Rice* (1911), A.C. 179, the House of Lords again had under consideration the meaning of the provision in sec. 7 that the Local Education Authority shall "maintain and keep efficient" their non-provided public elementary schools. The Local Education Authority at Swansea refused to pay salaries to teachers in a non-provided school at the same rate as it paid teachers in provided schools. The managers of the non-provided school complained and the Board of Education directed an inquiry, the result of which was a report by the Commissioner that the Local Education Authority had failed to maintain the school and keep it efficient. The House of Lords (confirming the Divisional Court and the Court of Appeal), held that he was right. In the course of his judgment Lord Loreburn, L.C., made the following remarks as to the duties of the Board of Education (p. 181): "In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will I suppose usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under sec. 7 (3) of this Act. But if the Court is satisfied that the Board have not acted judicially in the way I have described or have not determined the question which they are required by the Act to determine, then there is a remedy by *mandamus* and *certiorari*."

In some of the judgments in the Courts below it was affirmed as matter of law that under the Act of 1902 a local authority was not

entitled to differentiate between schools in regard to the scale of salaries, or the standard of efficiency, in the absence of special circumstances appropriate to the differentiation. Lord Loreburn, L.C., however, did not find anything in the statute itself which prohibited the local authority from doing for some schools more than it did for others, even if the circumstances were indistinguishable. If a school is kept efficient he thought the managers could not complain that the L.E.A. was not giving to their school benefits which they were giving to other schools. On the question whether the ratepayers might not have a remedy against the L.E.A. upon the ground that they were giving to the preferred school more than was justifiable, he expressed no opinion. At the same time he thought that such preference was a strong circumstance which the Board of Education were bound to scrutinise, in order to satisfy themselves that the discrimination did not involve any lowering of the proper standard of efficiency in the schools for which less was done. In the Swansea case, the grievance was that the L.E.A. were failing to keep the non-provided school efficient in that they would not pay the teachers salaries which the managers had found it necessary to pay in order to keep the teachers.

As to the power of a Local Education Authority to discriminate between teachers in making payments, the case of *Glasson* v. *Essex County Council* may be referred to (35 T.L.R. 478).

Keeping the School Premises in Repair.

The duty of maintaining a school and keeping it efficient involves the duty of keeping the school premises in repair. This is illustrated in the following cases:—

In a Scottish case of *Cormack* v. *Wick School Board* (16 R. 812), it was held that a school board was bound to keep in repair a gate, part of the school premises, which they knew was used by children going to the school; and that they were liable to damages for negligently failing to keep it in safe condition. By the Education (Scotland) Act, 1872, sec. 36, on which the action was based, it was provided that "the school board of every parish and burgh shall 'maintain and keep efficient' every school under their management."

At a public elementary school provided by the Surrey County Council a hole was known to the plaintiff to have been in the playground six months, about three to four inches deep. The caretaker knew of the hole for three or four weeks and filled it up daily with fine gravel but did not think it dangerous and did not report it to the managers or the head teacher. The latter knew the hole for four or five weeks and that it was getting worse. He did not think it dangerous as long as it was filled up and did not report it to the managers. It was the duty of the Local Education Committee's Clerk of the Works to inspect provided school premises from time to time and report directly to the Committee what repairs were necessary; and all repairs of the asphalte floors of playgrounds were carried out by the Local Education Committee and not by the school managers. The plaintiff, whilst being chased by another school boy at play, caught his foot in the hole and suffered personal injury. In an action for damages against the L.E.A., the jury found that the plainff was injured through the negligence of the Local Education Authority and judgment was given for the damages assessed. The judgment was upheld by the Court of Appeal and the main question discussed in that Court was who was responsible for the negligence,—the school managers or the Local Education Authority. It was held that the liability rested on the latter. The words "maintain and keep efficient" as applied to a school must necessarily include, not only what has been described as the "scholastic system" which is to be enforced, but also the place where the duty is to be performed by those who have to keep the school efficient for the scholars. Whatever may be necessary for the purpose of

performing the main duty, appears to be included in the general description of "keeping the school efficient" (per Lord Halsbury) *Ching* v. *Surrey* County Council (1910), 1 K.B. 736.

Furnishing a New Voluntary School.

The duty of maintaining and keeping efficient all public elementary schools within their area includes the obligation of providing new voluntary schools, approved as necessary by the Board of Education, with desks, cupboards and other school furniture necessary to enable them to be carried on as public elementary schools, inasmuch as the only duty on the persons who provided the schools was to provide the school building and not the necessary equipment: So held by the King's Bench Division and the Court of Appeal, Sir S. Evans dissenting in *R.* v. *Easton ex parte* Oulton (1913), 2 K. B. 60; 11 L. G. R. 279.

The Local Education Authority are to supply apparatus and everything necessary for the efficiency of the school (sec. 19 of the E.A., 1870).

As to prizes with the view of maintaining the efficiency of a school, see note on p. 19. The L.E.A. are entitled to use for the purposes of the school any furniture and apparatus belonging to the trustees or managers of any school not provided by them, and in use for the purposes of the school before the "appointed day" under this Act (Sch. II. (14)).

Expenditure.

The L.E.A. are also, subject to the conditions referred to in this sub-section, to have control of all expenditure required for maintaining and keeping efficient public elementary schools, except the expenditure for which the managers are under the Act to make provision.

The duties thus imposed on the Local Education Authority, however, only continue, in the case of a school not provided by the authority, so long as the conditions and provisions of the section are complied with; and it is to be borne in mind that unless these conditions and provisions are complied with, the conditions required in order that a school may obtain a parliamentary grant will not be fulfilled.

As to the schools which are to be deemed to be provided by the Local Education Authority, see note on sec. 6. In the case of schools not so provided, the expenditure for which under the Act the managers are to make provision, is that required for enabling them to comply with the requirements of par. (*d*) of this sub-section and of sub-sec. 2.

Supplying Water to a Non-provided School.

The duty of maintaining a school and keeping it efficient also involves the duty of furnishing it with an adequate supply of wholesome water. This is illustrated by the case of *Trowbridge Water Co.* v. *Wilts. County Council* (1909), 1 K. B., 824: 7 L. G. R. 484). Prior to the Education Act, 1902, the Water Company had supplied water to a school maintained but not provided by the County Council, for flushing and cleansing purposes and the managers of the school had paid for the water.

After the Act of 1902 had come into force the Company supplied water as before, and the managers included the charges for it in the quarterly accounts of their expenditure sent in to the County Council as Local Education Authority. For some years the County Council paid these quarterly charges direct to the Water Company, but ultimately discontinued doing so, alleging that the managers were liable. The King's Bench Division held as between the County Council, as Local Education Authority, and the managers of the school, that sec. 7 of the Education Act, 1902, operated to make the former liable.

The County Council were bound to maintain the school and therefore to provide a supply of water. They had control of the expenditure necessary for the purpose, and they had the power under the Act of

1902 to make themselves liable to the Water Company for the water supplied.

(2.) When the school is provided by the Local Education Authority the body of managers are to deal with such matters relating to the management of the school, and subject to such conditions and restrictions as the Local Education Authority determine (Sch. II., Div. B. (4)). The authority of the Local Education Authority therefore is as regards all matters absolute.

In the case of schools not provided by the Local Education Authority their powers are restricted.

Directions as to the Secular Education to be Given.

The managers of a non-provided school maintained as a public elementary school by the Local Education Authority are to carry out any directions of the authority as to the secular instruction to be given in the school. This would include reasonable directions as to books which should or should not be used in the school for purposes of secular instruction. But no direction given is to be such as to interfere with reasonable facilities for religious instruction during school hours.

Under the time-table of a public elementary non-provided school of which plaintiffs were foundation manager, religious observance and instruction began at 9 a.m. and continued to 9.55 a.m., when the registers were marked. Secular instruction commenced at 10 a.m. and continued until noon, but on saints' days and holy days the registers were marked at 9 a.m. in order that the children might be taken to church at 11 a.m. The Local Education Authority under the Education Act, 1902, issued a direction that secular instruction in all schools within their district should commence not later than 9.45 a.m. and continue through the school hours. The plaintiffs did not comply with the direction but continued to take the children to church on saints' days and holy days and did not alter the time-table. The Local Education Authority refused to continue to maintain the school and the Board of Education confirmed that authority's action. Thereupon the plaintiffs (the managers) brought an action against the Local Education Authority for a declaration that the Local Education Authority were bound to continue to maintain the school. Warrington J. held that the direction given by the Local Education Authority was a direction not as to religious but as to secular education within the meaning of sec. 7 (1) (*a*) of the Act of 1902, that the issue therefore between the managers and the Education Authority was a question to be determined by the Board of Education under sec. 7 (3) and that the Court had no jurisdiction to determine it. *Blencowe* v. *Northamptonshire County Council* (1907), 1 Ch. 504; 5 L. G. R. 551.

In another case a dispute arose between a Local Education Authority and the managers of a non-provided Church of England school which had been carried on for several years and recognised by the Local Education Authority and the Board of Education as a school for the education of children of both sexes in all standards. The Education Authority having provided a new public elementary school in the neighbourhood of the other desired to carry on the old school for mixed junior classes whilst the new provided school was to be carried on as a senior mixed department. The managers of the old school objected and the Local Education Authority directed under sec. 7 (1) (*a*) that after a certain date no secular education was to be given in the school except to children in the junior standards. The question was referred to the Board of Education who determined it under sec. 7 (3), by deciding that the directions of the Local Education Authority should be complied with. In an action for an injunction to restrain the Local Education Authority from interfering with the managers in the discharge of their

duties, Channell J. held that the direction of the Local Education Authority was a breach of the obligation imposed upon them by sec. 7 (1) (*a*) to maintain and keep the school efficient; that it was *ultra vires;* that the Board of Education had no jurisdiction to decide that they were *intra vires;* that the dispute was not a question which the Board of Education had power to decide under sec. 7 (3) or sec. 16 of the Act of 1902, and that the managers were entitled to an injunction to restrain the Local Education Authority from enforcing their direction. *Wilford* v. *W. R. of Yorkshire County Council* (1908), 1 K. B. 685; 6 L. G. R. 244.

Appointment of Teachers.

They can also give directions with respect to the number and educational qualifications of the teachers to be employed for such instruction. The directions so given, which should be given in a formal way in writing, the managers are required to carry out, and if they fail to do so the Local Education Authority will have the necessary power for carrying out the directions themselves as if they were the managers, and will thus be enabled to supersede the managers in the matter. It is for the managers to determine in the first instance what salaries or other remuneration shall be assigned to the teachers, but see Art. 28 of the Code on p. 418.

Although the appointment of a teacher will be made by the managers, the consent of the Local Education Authority to the appointment will be required, but that consent is not to be withheld except on educational grounds.

The secretary of the Board of Education said in Committee on the Bill: The Local Education Authority will not have the right to call for evidence of the comparative fitness of candidates for the post of head teacher in a denominational school other than the candidate recommended by the managers. (Parl. Debates (1902), vol. 13, 1075.)

In *Crocker* v. *Plymouth Corporation* (1906), 1 K.B. 494; 4 L. G. R. 571), the effect of sec. 7 of the Education Act, 1902, is not to make a personal contract between the Local Education Authority and the teacher so that the teacher can sue the Education Authority for salary. The Statute does not create any privity of contract between a teacher appointed by the managers of a non-provided school and the Local Education Authority. Therefore an action will not lie at the suit of the teacher against the Local Education Authority to recover arrears of salary. Nor does a contract arise from the mere fact that the Local Education Authority pays the teacher direct.

It may be useful here to note the case of *Powell* v. *Lee* (1908), 99 L. T. 284; 6 L. G. R. 840. In that case the managers of a voluntary school passed a resolution that the plaintiff, who was a candidate for the headmastership of the school, should be appointed to the office. The resolution was never communicated to the plaintiff officially by the managers as a body, but one of their number informed the plaintiff that he had been appointed. Subsequently the managers rescinded the resolution, and appointed someone else. The plaintiff brought an action against the managers, alleging that by reason of a breach of contract to employ him, he had suffered damage. The Court held that the appointment had not been properly communicated to the plaintiff, and that for want of proper communication there was no concluded contract between him and the managers.

It would clearly be *ultra vires* for the managers to impose on a teacher, as a condition of employment, any extraneous duties to be covered by the salary paid by the Local Education Authority.

In the case of pupil teachers, student teachers and certain other classes of teachers, sec. 29 of the Education Act, 1918, empowers the Local Education Authority to make the appointments.

The Local Education Authority have full control over all expenditure of the managers for which the managers have not themselves under the Act to make provision.

If any question arises between the Local Education Authority and the managers of a school not provided by them as regards their powers in matters above referred to, the question is to be determined by the Board of Education.

With regard to teachers, their tenure of office, salaries, &c., see secs. 35 and 86 of the Education Act, 1870, and notes on those sections.

Dismissal of Teachers: Consent of the Local Education Authority.

The Local Education Authority can direct the dismissal of a teacher on educational grounds, and the consent of the authority to the dismissal of a teacher by the managers will be required, unless the dismissal is on grounds connected with the giving of religious instruction in the school.

"Educational grounds" would include not only considerations as to the educational qualifications of a teacher, but also misconduct of such a character as affected his qualification to act as a teacher. "Grounds connected with the giving of religious instruction in the school" would appear to refer to religious instruction in connection with the duties of the teacher in the school. The Attorney-General, in Committee on the Bill, said: There might be questions which affected both the religious and the secular side. He took it that habitual drunkenness would affect a man's qualification to impart either secular or religious knowledge. The same might be said with regard to the case of a violent-tempered man. (Parl, Debates (1902), vol. 13, 956.)

In *Young* v. *Cuthbert* (1906), 1 Ch. 451; 75 L. J. Ch., 217, the plaintiff was mistress of a non-provided school under an agreement with the managers which either party might terminate on giving the other party three calendar months' notice in writing. The Act of 1902 came into force after the date of the agreement and the Local Education Authority duly delegated its powers to an education committee which appointed a sub-committee to deal with the appointment and dismissal of teachers and the sub-committee appointed a section to deal with details.

The managers asked the education committee's consent to dismiss the plaintiff; the "section" consented and the education secretary wrote "The Committee will approve the notice given by your managers to Miss Y., to terminate her engagement." On 30th November, 1905, written notice of dismissal was given by the managers to the plaintiff, with a statement that the notice had the approval of the education committee. On the 9th December the sub-committee approved and adopted the action of the "section."

On the 18th December plaintiff commenced an action to restrain the defendants from acting on their notice to her and on the 19th January, 1906, applied for an injunction. On the 20th January, before the argument was concluded, the education committee passed a resolution consenting to the dismissal.

Buckley J. held that the "section" was only a subordinate body, the duty of which was to consider and report and that the consent of the Education Authority had not been obtained at the time of dismissal; that that consent was not a condition precedent to dismissal and that when it was subsequently given it operated as a ratification of the dismissal with the provisional consent of the "section."

Held also that the effect of sec. 7 was that unless the Education Authority intervened, the power to appoint and dismiss teachers rested

with the managers; that if the Education Authority intervened the managers must either yield to that authority's wishes or disqualify the school for maintenance from public funds; and that the requirements of the Act as to consent were operative only as between the managers and the Education Authority and gave no right to the teacher.

In *Smith* v. *Macnally* (1912), 1 Ch. 816; 10 L. G. R. 434; the plaintiff was appointed teacher by the managers of a non-provided school after the passing of the Act of 1902, and in 1911 the managers dismissed her without obtaining the consent of the Local Education Authority, alleging that they were not satisfied with the religious instruction given by her in the school. The managers' real ground for dismissing her was that, in their opinion, she had ceased to be a member of the Church of England and was a Wesleyan.

The case of *Young* v. *Cuthbert* does not appear to have been cited. Warrington J. held that under sec. 7 of the Education Act, 1902, the position of the plaintiff was not merely that of a servant who had entered into a contract of employment with a master, a term of which was that she should not be dismissed except upon his compliance with certain conditions, but that she had a statutory right to the position which she had acquired under the Act, unless and until the requirements of the Act with regard to her dismissal had been complied with. *Held*, also, that the ground of dismissal appearing by the evidence was not a ground "connected with the giving of religious instruction in the school" within the meaning of sec. 7, sub-sec. 1 (*c*), and therefore that the consent of the Local Education Authority to the plaintiff's dismissal was necessary. *Held*, therefore, that the plaintiff was entitled to the injunction and declaration she asked.

In order to render a dismissal without the consent of the Local Education Authority a valid dismissal under sec. 7, sub-sec. 1 (*c*), of the Act, it is necessary not merely that the managers should in their own minds consider that a ground for dismissal connected with the giving of religious instruction exists, but that the ground should in fact exist.

In *Harries* v. *Crawfurd* (1918), 2 Ch., 158, 16 L. G. R. 662, the plaintiff, a master of a non-provided school, was dismissed by the managers (three of whom had been irregularly appointed) nominally on the ground of insubordination; but, in fact, because he wrote a letter of protest to the diocesan inspector who had reported adversely upon the result of the examination of the school in regard to religious instruction. The consent of the Local Education Authority was not given to the dismissal. The two preceding cases were cited and Peterson J. said that having to choose between the two views, he had been convinced by the reasoning of Buckley J., and he *held* that the plaintiff was not entitled to invoke the aid of sec. 1 (*c*) or to complain that he had not been properly dismissed because the consent of the Education Authority had not been obtained. He agreed with Buckley J. that the sub-sec. (*c*) was merely a condition of the maintenance of the school by the Local Education Authority, and that it did not confer any rights on a teacher as between him and the managers.

The case went to the Court of Appeal, but that Court decided it on the ground that upon the facts the ground of dismissal was connected with the giving of religious instruction in the school within sec. 7 (1) (*c*), and that the consent of the Local Education Authority was therefore not necessary. That Court also held with Peterson J. that the notice of dismissal was not invalidated by the irregular election of three of the managers, having regard to Sch. I. (B), clause 3, of the Act of 1902.

The Court declined to give any decision on the conflict of judicial opinion on the other point that had been raised.

In Mitchell v. *East Sussex County Council* (12 L. G. R. 1), in the Court of Appeal, Lord Justice Phillimore stated that the Court had jurisdiction to determine whether the master of a non-provided school had, in fact, been dismissed by the Local Education Authority on educational grounds, although it cannot decide whether the educational grounds are sufficient to justify the dismissal. In that case the plaintiff was headmaster of a non-provided school under an agreement terminable at three months' notice. The Local Education Authority directed the school managers to give the plaintiff notice of dismissal on educational grounds. The managers refused and the Local Education Authority, acting under sec. 7 (1) (*a*), of the Education Act, 1902, themselves gave the plaintiff three months' notice of dismissal "on educational grounds." Subsequently the managers asked the Board of Education (under sec. 7 (3)), to determine whether there were educational grounds in fact sufficient to justify the dismissal. Before the Board had determined the matter the plaintiff applied to the Chancery Division of the High Court to restrain the authority from acting on the dismissal until judgment, or until the Board of Education should determine the dispute between the managers and the authority. Eve J. dismissed the motion on the ground that there was no evidence to show that the reason given by the defendants for the dismissal was not truly stated; and his judgment was upheld by the Court of Appeal.

In Blanchard v. *Dunlop* (1917), 1 Ch. 165; 15 L. G. R., 25 (C.A.), the plaintiff had for twenty years been headmistress of the village school of Albourne, the school being a Church of England non-provided school, maintained by the East Sussex County Council. The defendants were the managers of the school, and under the agreement between them and the plaintiff her appointment might be terminated by giving three months' notice, but "when such notice by the managers requires the consent of the Local Education Authority it shall be sufficient if such notice be confirmed by the authority." A further clause stated that "the managers shall forthwith inform the Local Education Authority of any notice of termination given by them without any previous consent or direction of such authority and the grounds thereof."

In March, 1916, the plaintiff received notice terminating her engagement, no grounds being advanced for her dismissal, either then or subsequently. Upon her referring the matter to the East Sussex County Council, as Local Education Authority, she was informed by the secretary that the Elementary Schools Sub-committee had passed a resolution "that having regard to the decision of the High Court of Justice in *Young* v. *Cuthbert* (1906), 1 Ch. 451, 4 L. G. R. 356; this sub-committee are of opinion that the Local Education Authority have no power to intervene in the matter," and that this resolution had been approved and adopted by the education committee of the council.

The plaintiff moved the Court to restrain the managers from dismissing her until the consent of the Education Authority had been obtained and she had been heard in her own defence; contending that by the authority of *Smith* v. *Macnally* (1912), 1 Ch. 816; 10 L. G. R. 434, she was entitled to be informed of any charges made against her. It was admitted that no misconduct was alleged and that the dismissal was not on grounds connected with the giving of religious instruction. The matter was adjourned—for a fortnight by Astbury, J., and meanwhile the Local Education Authority, by letter to the managers, confirmed the plaintiff's dismissal. Held by the Court of Appeal, affirming the decision of Astbury, J., that neither under her agreement nor under the Education Act, 1902, had the plaintiff any right to be heard.

See also *Martin* v. *Eccles Corporation* (1919), 1 Ch. 387. Noted on p. 231

Inspection of Non-provided Schools.

(3.) The Local Education Authority have necessarily the power to inspect a school which is provided by them, and this sub-section confers a similar power in the case of a school not so provided.

The clause does not confer on each individual member of the Local Education Authority, or education committee, a right to claim admission to the school at any time they may think fit; but the right to inspect will be delegated by the authority to such members, officers, or other persons as may be authorised by them to act on their behalf. The Attorney-General said in Committee on the Bill that the authority to enter might be by actual and express delegation, or by the implied course of business.

See also sec. 76 of the Education Act, 1870, as to inspection of schools not provided by the Local Education Authority by an inspector, not one of His Majesty's Inspectors of schools; and sec. 27 of the Education Act, 1918, as to the inspection of schools and educational institutions not liable to inspection by any government department, if the governing body, or the headmaster, requests the Board of Education to make the inspection.

Providing the Schoolhouse: Repairs and Alterations: Rating.

(4.) The term "schoolhouse" is defined by sec. 3 of the Education Act, 1870, as including the teacher's dwelling-house and the playground, if any, and the offices and all premises belonging to or required for a school.

The managers of a school not provided by the Local Education Authority are to provide the schoolhouse, with the exception of the teacher's residence, if any, when it is included in the school premises, free of any charge to the Local Education Authority for use as a school. If ground rent or other rent is payable for the school premises it will devolve on the managers to pay it. If tithe commutation rent-charge or any taxes are payable in respect of the premises, they also must be provided for by the managers. As regards rates, sec. 3 of the Voluntary Schools Act, 1897, p. 107, provides that no person shall be assessed or rated to or for any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof. The effect of the definition of "local rate" is to include within the exemption the rates leviable by overseers and by urban district councils. Among the rates so included are the poor rates, rates levied either separately or by an addition to the poor rate for the expenses of a rural district council, or for expenses under the Burial Acts, rates levied under the Lighting and Watching Act, 1833, and the general district rates levied by urban district councils. Any part of the premises used as a teacher's residence is not exempt from assessment. If any rates become payable in consequence of a profit being obtained by the managers from the letting of the school premises when not in use as a school, it would appear that these rates should be paid by the managers.

When there is a teacher's residence forming part of the premises the Local Education Authority will not be entitled to claim that it shall be used either as a residence for the teacher or otherwise, except on such terms as may be agreed on between them and the managers or trustees. When a teacher occupies a residence rent free, it may be presumed that this is taken into account in fixing the salary of the officer, this salary being payable by the Local Education Authority. If the Local Education Authority agree with the managers for the

occupation of the teacher's residence, arrangements should be made as to the payments in respect of ground-rent, rates, and taxes (if any) for that part of the school premises.

The managers of the school are also out of funds provided by them to keep the schoolhouse in good repair, but such damage as the Local Education Authority consider to be due to fair wear and tear in the use of any room in the schoolhouse for the purpose of a public elementary school is to be made good by the Local Education Authority. The Attorney-General, in Committee on the Bill, said: So far as repairs were concerned, the managers should keep the schools in a condition fit for educational purposes. The words included structural repairs. (Parl. Debates (1902), vol. 13, 1110, 1118.) See the cases cited above in note (1) to this section as to the duty of the Local Education Authority to keep in repair schools provided by them.

The managers are also to make, at the cost of funds provided by them, such alterations and additions as may be reasonably required by the Local Education Authority. When the authority require that alterations or additions shall be made they should specifically state what are the alterations or additions required, and generally it would be desirable that plans should be prepared by them, showing what are the alterations or additions proposed. The rules issued by the Board of Education to be observed in fitting up and planning public elementary schools (1902, Cd. 1332), which may be obtained of Messrs. Eyre and Spottiswoode, East Harding Street, Fleet Street, E.C., it is desirable should be referred to before determining on any such requirements.

A proposal that the managers should undertake the cost of insurance against fire was negatived in Committee on the Bill.

The funds which will be available to the managers for the purpose of the expenditure for which they have to provide will mainly be donations and subscriptions, endowments, if any (subject to the provisions of sec. 13), payments in respect of the teacher's residence when forming part of the school premises, and also any profit which the managers may derive from letting the schoolhouse for times when it is not required under sub-sec. 1 (*d*) for use as a public elementary school, or under sub-sec. 1 (*e*) for use by the Local Education Authority for other educational purposes.

As regards a reference to the Board of Education of questions arising between the managers and the Local Education Authority with respect to the requirements under this sub-section, see sub-sec. 3.

As to school furniture, see sub-sec. 2 and Sch. II. (14).

(5.) In country districts especially it has been very usual to arrange for the use of voluntary public elementary schools for evening schools for technical instruction, and as a rule no charge is made on the authorities under the Technical Instruction Acts by the managers for the use of schools for the purpose referred to. Under this sub-section the Local Education Authority, if they have no suitable accommodation in schools provided by them, will have the right, in the case of a school not provided by them, to use, free of charge, any room in the schoolhouse for the purpose referred to or for any other educational purpose, for not more than three days in the week. The right in question is only conferred on the Local Education Authority, and consequently the council of a non-county borough or urban district, when not a Local Education Authority, although they are empowered under sec. 3 to supply or aid the supply of higher education, will have no such right. But in the case of these boroughs and urban districts there will usually be no such difficulty in finding suitable accommodation as would frequently arise, were it not for this provision, in rural areas under the jurisdiction of the council of a county.

The right in the case of a Local Education Authority can only arise where they have no suitable accommodation in schools provided by them.

In this matter also any question arising between the managers and the Local Education Authority may, on being referred to the Board of Education, be determined by that Board under sub-sec. 3.

With regard to the use of a public elementary school for the purpose of taking a poll in parliamentary elections, and elections of county councillors, guardians, urban and rural district councillors, and parish councillors, for proceedings and meetings in connection with the question of allotments, and for meetings of parish councils and parish meetings in parishes in the district of a rural district council, see notes to sec. 19 of the Education Act, 1870, p. 20 *et seq.*

(6.) The Local Education Authority are entitled to use for the purpose of the school in the case of a public elementary school not provided by them, any school furniture and apparatus belonging to the trustees or managers of the school and in use for the purposes of the school before the "appointed day" (Sch. II. (14)). As to the "appointed day," see sec. 27.

Any new furniture or additional furniture which may be required for the school it will devolve on the Local Education Authority to supply.

As there will frequently be a joint use of the furniture by the Local Education Authority and the magagers, the sub-section provides that the managers shall, in respect of the use by them of the school furniture out of school hours, be liable to make good any damage caused to the furniture by reason of that use other than damage arising from fair wear and tear.

In like manner, the Local Education Authority in respect of the use by them of any room in the schoolhouse out of school hours are to make good any damage caused to the room by reason of that use other than damage arising from fair wear and tear.

As regards the lighting and warming of the rooms, it will devolve on the Local Education Authority to make the requisite arrangements for such times as the school is used by them, and on the managers for such times as they have the use of the rooms.

The managers are responsible for a room in the schoolhouse which has been used by them being left in a proper condition for school purposes.

Any question arising under this sub-section between the Local Education Authority and the managers may be determined by the Board of Education under sub-sec. 3.

Questions to be Determined by Board of Education.

(7.) The convenient course when a question arises which it is desired to submit to the Board to be determined by them would be that a full statement in writing of the facts should be agreed on by both parties, the contention on each side being also stated, and that the Board should give their decision on this statement. When no such statement can be agreed on, each party should state their case in writing. If the Board of Education consider it necessary they can direct a local inquiry under sec. 40 of the Education Act, 1918. When an inquiry is held, the Board can direct by whom the costs of the inquiry shall be paid.

Several cases have come before the Courts in which question has been raised as to the extent of the jurisdiction of the Board of Education to decide questions referred to them under sec. 7 (3) of the Act.

In *Board of Education* v. *Rice* (*ubi supra* p. 143), Lord Loreburn L.C. expressed the opinion that the duty of maintaining and keeping efficient a non-provided school imposed upon a Local Education Authority by

sec. 7 is a matter which can be a "question" between the authority and the school managers so as to come within the jurisdiction of the Board of Education under sec. 7 (3).

In *West Suffolk County Council* v. *Olorenshaw* (1918), 2 K.B. 687; 16 L. G. R. 711), Shearman, J., said that sub-sec. 3 applied to questions of fact relating to the expense of administering the school, such as questions whether certain expenses have been reasonably incurred. In the case before the Court the managers of a non-provided school had to provide a cleaner for the school. They paid 9*s.* a week, because they could not get one for less. The Local Education Authority (the County Council) refused to pay more than 6*s.* that being the sum for which a cleaner could be got in other parishes in the County. The managers sought the advice of the Board of Education but did not ask them to determine the question. Eventually they recouped themselves for the excess 3*s.* a week out of some money which it was their duty to pay over to the Council. The Council then sued them in the County Court for the money and the managers counterclaimed for what they had paid. On appeal to the High Court it was held that the County Court had no jurisdiction and that the question came within sub-sec. (3) and must be decided by the Board of Education.

In *Blencowe* v. *Northamptonshire County Council* the facts of which are set out on page 146, the question was mainly one of school management: Warrington, J., held that he had no jurisdiction to determine it, and that it must be decided by the Board of Education.

In Wilford v. *West Riding of Yorks County Council* the facts of which are set out—on page 147, the question was whether the Local Education Authority could, in effect, alter the character of a voluntary school by changing it, against the wish of the managers, from a mixed school for all classes of children to a school for mixed junior classes only. Channell, J., held that the dispute was not a question which the Board of Education had power to decide under sec. 7 (3) or sec. 16 of the Act of 1902.

In Crocker v. *Plymouth Corporation* (1906), 1 K. B. 494; 4 L. G. R. 571; Lord Alverstone, C. J., said any question between the Local Education Authority and the managers as regards the qualification of a particular teacher from an educational point of view is a matter to be decided under sec. 7 (3) by the Board of Education. It is not a matter which can properly be discussed in a Court of law, p. 147.

See also *Gateshead Guardians* v. *Durham County Council* (cited on p. 5), where Swinfen Eady, L. J., said: "If a parent has a legal right to free education for his child at a public elementary school the Board of Education cannot, nor can the Education Authority take it away. The statute does not confer upon the Board any power to determine the legal right as between the parent and the school authority. The decision of the Board is only expressed to be final for the purposes of the Code.

(8.) With regard to the conditions which must be fulfilled by an elementary school, in addition to that imposed by this sub-section, in order to obtain a parliamentary grant, see secs. 7 and 97 of the Education Act, 1870, and Art. 31 of the Code, on p. 419.

In connection with the conditions which by this sub-section are required to be fulfilled in order that a school may obtain a parliamentary grant, it is to be observed that under the provisions in Sch. III. (7) to this Act and sec. 99 of the Education Act, 1870, the managers of every elementary school have power to fulfil the conditions required to be fulfilled in order to obtain a parliamentary grant, notwithstanding any provision contained in any instrument regulating the trusts or management of their school. See also on p. 443.

(9.) See sec. 29 of the Education Act, 1918, cited above under "Additional Statutory Powers," as to the power of the Local Education Authority to appoint unattached teachers as well as all pupil teachers and student teachers.

In the case of a public elementary school not provided by the Local Education Authority it will be entirely in the discretion of the Local Education Authority, whether, when they appoint assistant teachers or pupil teachers, they will have any regard to the religious creed and denomination of the person proposed to be appointed.

This sub-section does not impose any obligation to notify publicly a vacancy in the post of pupil teacher; but see the note on p. 391.

Religious Instruction.

(10.) The religious instruction given in a school not provided by the Local Education Authority is as regards its character to be in accordance with the provisions, if any, of the trust deed relating thereto, and, subject to the proviso, it is to be under the control of the managers.

For definition of the term "trust deed," see sec. 24 (5).

The provisions of sec. 7 of the Education Act, 1870, as to religious observances and instruction in religious subjects in schools and the other regulations included in that section must be complied with, or the conditions which are required in order that an elementary school may obtain a parliamentary grant will not be fulfilled; but this is subject to the Act of 1919, on p. 443.

As regards the proviso, precedents of trust deeds settled for Church of England schools and schools in connection with other religious bodies are given in a Parliamentary Paper [Cd. 1347], 1902.

The following is an extract from a trust deed included amongst the precedents: "In case any difference shall arise between the minister and the curate and the committee of management hereinbefore mentioned respecting the prayers to be used in the school not being the Sunday school or the religious instruction of the scholars attending the same or any regulation connected therewith or the exclusion of any book the use of which in the school may be objected to on religious grounds, or the dismissal of any teacher from the school on account of his or her defective or unsound instruction of the children in religion, the minister or curate or any member of the committee may cause a written statement of the matter in difference to be laid before the bishop of the diocese within which such school shall be situated, a copy thereof having been previously communicated to the committee or minister or curate if they or he shall not have been parties or privy to the making of the statement respectively, and the bishop may inquire concerning and determine the matter in difference, and the decision of the bishop in writing under his hand thereon when laid before the committee shall be final and conclusive in the matter."

The Attorney-General, in Committee on the Bill, said: The only reference to the bishop on my view of the clause will be on any question as to the character of the religious teaching. On every other question—as to the management of the religious teaching, how it is to be given and by whom—the managers will have full control, and no appeal will lie against their decision. If the managers should infringe the terms of the trust as regards the character of the religious instruction as defined by the deed itself or by the bishop on reference under the terms of the deed, the proper remedy would be as in the case of any abuse of a charitable trust by an information in the name of the Attorney-General. (Parl. Debates (1902), vol. 15, 847.)

If the trust deeds provide for the reference to the bishop on the question of what is appropriate religious teaching, having reference to the tenets of the denomination, that reference will not be interfered with; but as regards the whole management and control of the giving

of religious instruction, how and by whom it is to be given, the effective power of decision rests without appeal with the managers. (Parl. Debates (1902), vol. 15, 1107.)

In public elementary schools provided by the Local Education Authority the provision in sec. 14 of the Education Act, 1870, that no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school, must be strictly observed, as well as the several regulations contained in sec. 7 of that Act.

In Attorney-General v. *Denbighshire County Council. In re Wrexham (Educational) Foundation* (1910), 74 J.P. 198; 8 L. G. R. 526, the question arose whether, under a scheme approved in 1845 by the Court of Chancery, the regular teachers of a non-provided school at Brymbo could teach the doctrines of the Church of England in the school on week days during school hours. The Board of Education wrote to the Denbighshire County Council that, as they were advised, the teachers could not do so under the scheme, but that the managers could allow the clergyman to enter and give such instruction. The Council informed the teachers and warned them that their engagement should be continued upon their strictly conforming with this decision.

The managers, however, did not concur, and the Board of Education certified the case to the Attorney-General who took out a summons to get the question determined in the Chancery Division.

The Court held, on the construction of the scheme, that the school was intended to be carried on in accordance with the principles of the Church of England and that having regard to sec. 7 (6) of the Education Act, 1902, the managers were entitled to authorise religious instruction of that character to be given by the regular teachers on week days during school hours. Moreover as sec. 7 (6) provided that religious instruction was to be under the control of the managers, they could direct the regular teachers to give such religious instruction.

A priest, chairman of a Roman Catholic school, has no authority to eject a child during religious instruction, for obeying the head mistress contrary to his own directions. *Lucan* v. *Barrett*, 31 T.L.R. 508.

(11.) The managers will act as one body with regard to all subjects relating to management.

With respect to the powers of the Local Education Authority under the section as to appointing and dismissing teachers, see sub-secs. 1 (*a*) and (*c*) and 5.

Subject to the powers given to the Local Education Authority by sec. 7 of the Act of 1902, the school managers have the (exclusive) power of appointing and dismissing teachers. [The word "exclusive" is no longer applicable, having regard to the provisions of sec. 29 of the Education Act, 1918.] The appointment may be made by a resolution of the managers at a properly constituted meeting and an entry of the fact of the appointment in their minute book, the entry being duly signed by the chairman as correct, is evidence of the appointment. (*Knight* v. *Halliwell*, 43 L. J., M. C. 113.)

It would appear that the appointment, even if entered in the minute book, is not complete until it has been authoritatively communicated to the person appointed. Information that he has been appointed conveyed to him by an individual on his own motion and not on behalf of the managers, is not sufficient to justify the person receiving it in bringing an action for breach of contract to employ him, after the managers had rescinded their resolution in his favour and appointed someone else. (*Powell* v. *Lee* (1908), 6 L. G. R. 840.)

The managers of a non-provided public elementary school are entitled under sec. 7 (7) of the Education Act, 1902, to appoint a caretaker and cleaner of the school and to have their salaries paid by the

Local Education Authority. (*Gillow* v. *Durham County Council* (1913), A.C. 54.)

By Sch. I. B. (3), the acts of a body of managers are not to be invalidated by any vacancy in their number or by any defect in the election, appointment, or qualification of any manager. *In Meyers* v. *Hennell* (1912), 2 Ch. 256, the question arose whether the dismissal of a headmaster by managers was valid. By a Final Order made under sec. 11 of the Education Act, 1902, the Board of Education directed that no person should be "entitled to act as a foundation manager" of a certain non-provided elementary school until he had signed a declaration that he was a member of the Church of England. The foundation managers of the school having dismissed the headmaster, it was found that three of them had not signed the required declaration. The headmaster applied to the Chancery Division for a declaration that his engagement had not been lawfully terminated. Eve, J., held that the provision in Sch. I. B. (3) of the Act of 1902, that the proceedings of a body of managers "shall not be invalidated by any defect in the election, appointment or qualification of any manager," prevented the proceedings of the managers in the plaintiff's case from being invalid.

Provision of New Schools.

8.—(1.) Where the Local Education Authority or any other persons propose to provide a new public elementary school, they shall give public notice of their intention to do so, and the managers of any existing school, or the Local Education Authority (where they are not themselves the persons proposing to provide the school), or any ten ratepayers in the area for which it is proposed to provide the school, may, within three months after the notice is given, appeal to the Board of Education on the ground that the proposed school is not required, or that a school provided by the Local Education Authority, or not so provided, as the case may be, is better suited to meet the wants of the district than the school proposed to be provided, and any school built in contravention of the decision of the Board of Education on such appeal shall be treated as unnecessary.

(2.) If, in the opinion of the Board of Education, any enlargement of a public elementary school is such as to amount to the provision of a new school, that enlargement shall be so treated for the purposes of this section.

(3.) Any transfer of a public elementary school to or from a Local Education Authority shall for the purposes of this section be treated as the provision of a new school.

Additional Statutory Powers.

Sec. 30 (2) *of the Education Act*, 1918 (p. 391). Where the managers of a non-provided school have given eighteen months' notice to close it and they are unable or unwilling to carry it on up to the expiration of the period specified in the notice, the Local Education Authority may on certain conditions carry on the school temporarily as one provided by them. In this case the use of that schoolhouse by the Local Education Authority is not be to deemed for the purpose of sec. 8 of the Act of 1902, to constitute the provision of a new school.

Sec. 32 (2) *of the Education Act*, 1918 (p. 393). Notwithstanding anything continued in sec. 8 of the Education Act, 1902, the provision

of premises for classes in practical or advanced instruction for children attending from more than one public elementary school, shall not be deemed to be the provision of a new public elementary school.

Note 8.—In sec. 20 of the Education Act, 1873, and the notes thereto information is given as to the method of publishing notices for the purposes of the Elementary Education Acts.

For definition of the term "ratepayers," see sec. 3 of the Education Act, 1870. The appeal by ratepayers must be by not less than ten. This follows the provision in sec. 9 of the Education Act, 1870 (now repealed), as to appeals by ratepayers against the decision of the Board of Education as to public school accommodation required.

See sec. 98 of that Act as to the refusal of a parliamentary grant in the case of a school which is in the opinion of the Board of Education unnecessary.

Where a building which has been used as a public elementary school is pulled down and a new school building is erected in its place for the purpose of providing for the same area as that for which the orginal school provided, and for a like number of children, this would not appear to be the provision of a new school within the meaning of the section.

Sec. 9 specifies the considerations to which the Board of Education are to have regard in determining whether a school or such an enlargement as that referred to in sub-sec. 2 is necessary or not.

Power for building, improving, enlarging and fitting up schoolhouses provided by the Local Education Authority will be found in sec. 19 of the Education Act, 1870. Where a new school is to be built, a Local Education Authority sometimes invites competitive designs from architects, offering to pay a premium to the architect whose design is accepted.

The Local Government Board, in reply to an inquiry addressed to them on the subject, intimated their willingness to consider, in connection with an application by a Local Education Authority for consent to a loan for the erection of a public elementary school in any particular case, the question of allowing the inclusion in the loan of an item in respect of a premium to be paid to the successful architect. (*Local Government Chronicle*, 30th December, 1905.)

There would seem to be no legal objection to a reasonable sum being paid for such a premium, the amount being in fact a payment, or part of the payment, for preparing plans of the building.

Necessity of Schools.

9. The Board of Education shall, without unnecessary delay, determine, in case of dispute, whether a school is necessary or not, and, in so determining, and also in deciding on any appeal as to the provision of a new school, shall have regard to the interest of secular instruction, to the wishes of parents as to the education of their children, and to the economy of the rates; but a school for the time being recognised as a public elementary school shall not be considered unnecessary in which the number of scholars in average attendance, as computed by the Board of Education, is not less than thirty.

Note 9.—This section enables the Board of Education to determine, in the case of an existing school, whether it is necessary or not, as well as to decide on the appeals referred to in sec. 8. Under sec. 98 of the Education Act, 1870, power is given to the Board of Education in certain

circumstances to refuse a grant to schools which they deem to be unnecessary.

With respect to the number of scholars in average attendance, see Art. 43 of the Elementary Education Code, 1919, which defines "an attendance," and Art. 46 which provides that the average attendance for any period is found by dividing the total number of attendances during that period by the number of times for which the school has met during such period, pp. 600 and 603.

Sec. 22 (as amended, see p. 203), limiting the provision in a public elementary school of instruction under the regulations of the Board of Education to scholars within the age therein referred to, is also to be borne in mind. It must be remembered that the enlargement of the scope of education by such provisions as are contained in secs. 2, 8, and 17 of the Education Act, 1918, must increase the necessity in many districts for providing school accommodation.

Foundation Managers.

11.—(1.) The foundation managers of a school shall be managers appointed under the provisions of the trust deed of the school, but if it is shown to the satisfaction of the Board of Education that the provisions of the trust deed as to the appointment of managers are in any respect inconsistent with the provisions of this Act, or insufficient or inapplicable for the purpose, or that there is no such trust deed available, the Board of Education shall make an order under this section for the purpose of meeting the case. (1)

(2.) Any such order may be made on the application of the existing owners, trustees, or managers of the school, made within a period of three months after the passing of this Act, and after that period on the application of the Local Education Authority or any other person interested in the management of the school, and any such order, where it modifies the trust deed, shall have effect as part of the trust deed, and where there is no trust deed shall have effect as if it were contained in a trust deed.

(3.) Notice of any such application, together with a copy of the draft final order proposed to be made thereon, shall be given by the Board of Education to the Local Education Authority and the existing owners, trustees, and managers, and any other persons who appear to the Board of Education to be interested, and the final order shall not be made until six weeks after notice has been so given.

(4.) In making an order under this section with regard to any school, the Board of Education shall have regard to the ownership of the school building, and to the principles on which the education given in the school has been conducted in the past.

(5.) The Board of Education may, if they think that the circumstances of the case require it, make any interim order on any application under this section to have temporary effect until the final order is made. (1)

(6.) The body of managers appointed under this Act for a public elementary school not provided by the Local Education Authority shall be the managers of that school both for the purposes of the Elementary Education Acts, 1870 to 1900, and this Act, and, so far as respects the management of the school as a public elementary school, for the purpose of the trust deed. (2)

(7.) Where the receipt by a school, or the trustees or managers of a school, of any endowment or other benefit is, at the time of the passing of this Act, dependent on any qualification of the managers, the qualification of the foundation managers only shall, in case of question, be regarded. (3)

(8.) The Board of Education may, on the application of the managers of the school, the Local Education Authority, or any person appearing to them to be interested in the school, revoke, vary, or amend any order made under this section by an order made in a similar manner ; (1) but before making any such order the draft thereof shall, as soon as may be, be laid before each House of Parliament, and, if within thirty days, being days on which Parliament has sat, after the draft has been so laid before Parliament, either House resolves that the draft, or any part thereof, should not be proceeded with, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order. (4)

Additional Statutory Powers.

By sec. 47 of the Education Act, 1918, power is given to trustees in certain cases to appoint new trustees of an educational charity without the approval of the Board of Education and in such cases the Board may modify the scheme to give effect to the provision.

Note 11.—(1.) At the time of the passing of this Act there were 10,796 voluntary schools in England and Wales exclusive of London. A very large number of these obtained orders for the appointment of foundation managers in 1903. In many cases the Board of Education issued Interim Orders which provided that the first foundation managers should be appointed by the persons who were *de facto* managers at the date of that order. This gave time for the trust deeds to be examined before the Final Order was issued.

In Meyers v. *Hennell* (1912), 2 Ch. 256, the Board of Education made a Final Order under sec. 11 of the Act of 1902, in which they declared that no person shall be entitled to act as foundation manager of a certain non-provided school until he had signed a declaration that he was a member of the Church of England. Eve, J., held that the words of the Final Order did not amount to an absolute prohibition against any foundation manager acting until he had signed the declaration in question, and that the provision in Sch. I. B. (3), p. 216, applied to validate the acts of manager done before signing.

As to the meaning of "trust deed," see sec. 24 (5) of this Act, and the note thereon.

See notes on secs. 6 (3) (*a*) as to the grouping of schools under one body of managers, also sec. 12 as extended by sec. 31 of the Education Act, 1918.

Relation of Local Education Authority to Managers.

Lord Haldane, L.C., said (in *Gillow* v. *Durham County Council* (1913), A.C., on p. 65), The relationship between the Local Education Authority and the school managers of a non-provided school is not that of principal and agent ; but one of co-ordinate authorities between which powers are distributed (thus differing from Farwell, L. J.). The scheme of the statute is to give the bodies of managers who were in existence when the Act (of 1902) began to operate a title to aid from the rates similar to that of a provided school, while denying to the authority, as their pay master, any but a limited title to interfere with powers of management. Those powers continue to include that of general management, and, as part of this, the responsibility for looking after the school and appointing the necessary caretakers and cleaners.

Closing of Schools.

As to the closing of schools, the Board of Education state, "It is to be remembered that (except in the case of such privately-owned schools as are the absolute property of the owner, and are subject to no trusts whatsoever) managers and trustees of elementary schools usually hold the school premises upon trust, either themselves to carry on a school therein or to permit it to be carried on. It is therefore not open to either body, or even to both bodies acting together, to close the school as or when they please. An attempt to close the school capriciously or for insufficient reasons may involve the consequences attendant on a breach of trust. If trustees or managers are unable or unwilling to carry on the school it is their duty at once to apply to the Board of Education (who for this purpose may exercise the powers formerly possessed by the Charity Commissioners) to be relieved of their trust or for direction in the matter,"

In this connection the provisions of sec. 30 of the Education Act, 1918 (p. 391), must be observed. That section requires that the managers of a non-provided public elementary school, if they wish to close it, shall give eighteen months' notice to the Local Education Authority of their intention to close the school. A notice under that provision cannot be withdrawn except with the consent of the Local Education Authority. If the managers, having given the notice, are unable or unwilling to carry on the school up to the period specified in the notice, the schoolhouse shall be put at the disposal of the Local Education Authority if that authority so desire, upon the terms and conditions specified in sec. 30. The use of the schoolhouse during the period is not to constitute the provision of a new school.

When a certified efficient school is discontinued, the managers should hand over the school registers to the Local Education Authority of the district (Board of Education Circular, 21st March, 1901).

In a case in which a Local Education Authority ceased to maintain a non-provided school and sent their inspector to tell the teachers and children that the school would be closed and offered employment to the teachers in other schools, it was held in the circumstances that there was no trespass and that the offers to the teachers were justified : See *Blencowe* v. *Northamptonshire C.C.* (1907), 1 Ch. 504 ; 5 L. G. R. 551.

(2.) See also sec. 7 (7), which provides that the managers of a school maintained but not provided by the Local Education Authority shall have all powers of management required for the purpose of carrying out the Act, and shall (subject to the powers of the Local Education Authority under that section) have the power of appointing and dismissing teachers. The managers will act as one body.

(3.) The object of this clause is to provide that where a school is entitled to an endowment or some other benefit so long as the managers are of a particular denomination, that school shall not be deprived of

the endowment or benefit if the foundation managers are of the necessary religious denomination, by reason of the fact that the representative of the local authority, or the minor local authority, is of some religious denomination other than that to which the endowment or the benefit applied.

(4.) In calculating the thirty days from the date of laying the draft before each House of Parliament, it would appear that the thirty days may include any day when there has been a sitting either of both Houses, or of one only.

*Grouping of Schools under One Management.**

12.—(1.) The Local Education Authority may group under one body of managers any public elementary schools provided by them, and may also, with the consent of the managers of the schools, group under one body of managers any such schools not so provided.

(2.) The body of managers of grouped schools shall consist of such number and be appointed in such manner and proportion as, in the case of schools provided by the Local Education Authority, may be determined by that authority, and in the case of schools not so provided, may be agreed upon between the bodies of managers of the schools concerned and the Local Education Authority, or in default of agreement may be determined by the Board of Education.

(3.) Where the Local Education Authority are the council of a county, they shall make provision for the due representation of minor local authorities on the bodies of managers of schools grouped under their direction.

(4.) Any arrangement for grouping schools not provided by the Local Education Authority shall, unless previously determined by consent of the parties concerned, remain in force for a period of three years.

Note 12.—This section contemplates that where there is a grouping of public elementary schools under one body of managers there shall be separate groupings of schools provided by the Local Education Authority and of schools not so provided. In the latter case the grouping can only be carried out with the consent of the managers of the schools. The managers referred to are the managers under the Act, and it will therefore be necessary, although grouping may be contemplated, that managers should in the first instance be appointed for each school proposed to be grouped.

As to the minor local authorities, see sec. 24 (2), p. 210.

The scheme of this section is assisted by sec. 31 of the Education Act, 1918, which provides that where there are two or more public elementary schools not provided by the Local Education Authority, of the same denominational character, in the same locality, the Local Education Authority, if they consider that it is expedient for the purpose of educational efficiency and economy, may, with the approval of the Board of Education, give directions for the distribution of the children

* So much of sec. 12 as relates to the public elementary schools provided by the Local Education Authority, does not apply to London (see p 236).

in those schools according to age, sex, or attainments, and otherwise with respect to the organisation of the schools., and for the grouping of the schools under one body of managers constituted in the manner provided by sec. 12 (2) of the Education Act, 1902. Provision is also made for applying secs. 6 and 11 of that Act and for holding a public inquiry if the Board of Education are requested to do so, by school managers affected.

Endowments.

13.—(1.) Nothing in this Act shall affect any endowment, or the discretion of any trustees in respect thereof: Provided that, where under the trusts or other provisions affecting any endowment the income thereof must be applied in whole or in part for those purposes of a public elementary school for which provision is to be made by the Local Education Authority, the whole of the income or the part thereof, as the case may be, shall be paid to that authority, and, in case part only of such income must be so applied and there is no provision under the said trusts or provisions for determining the amount which represents that part, that amount shall be determined, in case of difference between the parties concerned, by the Board of Education; but if a public inquiry is demanded by the Local Education Authority, the decision of the Board of Education shall not be given until after such an inquiry, of which ten days' previous notice shall be given to the Local Education Authority and to the minor local authority and to the trustees, shall have been first held by the Board of Education at the cost of the Local Education Authority. (1)

(2.) *Any money arising from an endowment, and paid to a county council for those purposes of a public elementary school for which provision is to be made by the council, shall be credited by the council in aid of the rate levied for the purposes of this Part of this Act in the parish or parishes which in the opinion of the council are served by the school for the purposes of which the sum is paid, or, if the council so direct, shall be paid to the overseers of the parish or parishes in the proportions directed by the council, and applied by the overseers in aid of the poor rate levied in the parish. (2)

Additional Statutory Powers.

Secs. 45 to 47 of the Education Act, 1918, contain further provisions with regard to educational trusts (see p. 423).

Note 13.—(1.) In the case of a school provided by the Local Education Authority, as that authority would make provision for all purposes, there would not appear to be any question as to the income from the endowment in respect of the school being payable to the Local Education Authority.

Where in the case of a school not provided by the Local Education Authority the income of an endowment must necessarily under the trusts or other provisions affecting the endowment be applied wholly

*Sub-sec. (2) of sec. 13 does not apply to London. See Sch. I. (4) of the Education (London) Act, 1903 (p. 236).

to the purposes of a public elementary school for which provision is to be made by the Local Education Authority the whole of the income must be paid to that authority. But the endowment may be partly for purposes for which the Local Education Authority are not empowered to make provision—such as keeping the schoolhouse in good repair, and making alterations and improvements in the buildings. In such cases where there is no provision under the trusts or other provisions affecting the endowments, for determining the amount which represents such part, the amount is to be determined in case of difference by the Board of Education.

Trust deeds are often expressed in vague and general terms, giving no clear direction which would require the application of the income of the endowment to one or other of the purposes above mentioned, and sometimes there are no written trusts.

In cases of difference of opinion or doubt, trustees may apply to the Board of Education for direction in the matter, and, if they act upon such direction, they are completely protected against personal liability. The Local Education Authority may demand that before the decision of the Board of Education is given a public inquiry shall be held, but neither the trustees of the endowment nor the managers of the school to which the endowment applies nor any other persons have a smiliar right. As regards the public inquiry, see sec. 40 of the Education Act, 1918.

See memorandum issued by the Board of Education as to endowments, dated 16th February, 1903. It is assumed that most, if not all, of the cases calling for decision under sec. 13 have now been dealt with. The memorandum has therefore not been reprinted in this edition.

For definition of the term " minor local authorities," see sec. 24 (2).

It was held by Byrne, J., that, under a gift to a school which was to go to another purpose on the school ceasing to be supported by voluntary contributions, or becoming subject to the control of a school board, the gift did not go over on the transfer of the school from the school board to the County Council. Although the latter has many duties which were formerly performed by school boards it is elected by a different body of electors, has a different constituency, and has different duties to those of an old school board. (*In re Beard's Trusts : Butlin* v. *Harris* (1904), 1 Ch. 270; 2 L. G. R. 320.)

But where a gift over was conditional on the school being carried on under the conditions contained in the trust deed, one of which fixed the qualifications of persons who should have control of the school and those persons were displaced as a result of the Education Act, 1902, Buckley, J., held that the gift to the school ceased to have effect. *In re Blunt's Trusts : Wigan* v. *Clinch* (1904), 2 Ch. 767; 2 L. G. R. 1295.

A sum of £1,000 was left to trustees, with a direction that the income should be paid for the purposes of education at the national schools at Alcester, and the carrying on of the same until a school board or other representative body under the Education Acts should be formed for that parish, or . . . and afterwards the said sum was to be devoted as a further endowment for the benefit of the almshouses at Alcester established by the donor. Doubts arose after the passing of the Act of 1902, and the supersession of the school board by the County Council, whether the trustees should not pay over the trust moneys for the benefit of the almshouses. Parker, J., held that " other representative body" meant a body elected in the same way and for the same purposes as the school board and that it would be somewhat of a perversion of language to say that a County Council was a representative body formed under the Education Acts for the parish. In the circumstances, he declared that the fund was not to go over to the almshouses ; that it is still an endowment, and must be dealt with under sec. 13 of the Act of 1902. (*In re Smallwood : Gothard* v. *Chapman* (1910), 1 Ch. 272.)

The income of a fund was bequeathed in trust to provide an annual treat or field day for the school children of Turton, or as many of such children as the same would provide for, the selection to rest with the vicar of St. Anne's Church, Turton, and the trustees of the fund. The income was not sufficient to provide a treat or field day for all the school-children of Turton, who numbered about 600 :—

Held, that the bequest was a good charitable gift on two grounds : (1.) as tending to the advancement of education by giving the children an opportunity of observing objects of the countryside and of nature about which they had been taught at school, and also by affording an incentive to regular attendance and industry in order to be selected as participants, and (2.) as being for purposes beneficial to a particular section of the community, namely, the school-children resident or being educated at Turton. (*In re Mellody*: *Brandwood* v. *Haden* (1918), 1 Ch. 228.) Cf. *In re Mariette*, cited on p. 19.

(2.) The provision in sub-sec. 2 applies only to moneys arising from an endowment, and paid to the council of a county for the purposes of a public elementary school for which provision is made by the council.

There is no similar provision in the case of county boroughs, non-county boroughs and urban districts. In those cases, the whole borough or district and not particular parishes will have the benefit of the moneys arising from the endowment which may be paid to the council.

Schools attached to Institutions.

15. The Local Education Authority may maintain as a public elementary school under the provisions of this Act, but shall not be required so to maintain, any Marine school, or any school which is part of, or is held in the premises of, any institution in which children are boarded, but their refusal to maintain such a school shall not render the school incapable of receiving a parliamentary grant, nor shall the school, if not so maintained, be subject to the provisions of this Act as to the appointment of managers, or as to control by the Local Education Authority.

Note 15.—There are certain schools, few in number, connected with institutions in which children are boarded as well as instructed, which have been recognised by the Board of Education as public elementary schools, the schools being attended wholly or mainly by children boarded in the institution. The children in these institutions are usually of a destitute class and brought together from other districts. In the case of these schools as well as the marine schools, of which there are but five or six, it will be entirely optional with the Local Education Authorities whether or not they will undertake to maintain them. If they refuse to do so, the schools will continue under their present management and be outside any jurisdiction of the Local Education Authority, but this will not preclude the schools from obtaining parliamentary grants.

Power to enforce Duties under Elementary Education Acts.

16. If the Local Education Authority fail to fulfil any of their duties under the Elementary Education Acts, 1870 to 1900, or this Act, or fail to provide such additional public school accommodation within the meaning of the Elementary

Education Act, 1870, as is, in the opinion of the Board of Education, necessary in any part of their area, the Board of Education may, after holding a public inquiry, make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and any such order may be enforced by *mandamus*.

Note 16.—The Board of Education were empowered under the Elementary Education Acts to declare a school board in default.

A school board might be declared to be "in default"—

(1.) If the school board failed to comply within a period of twelve months with the requisition sent by the Board of Education on the formation of the school board, requiring them to supply the public school accommodation specified in the requisition.

(2.) If when the Board of Education sent the school board a requisition requiring them to fulfil their duty as regards keeping efficient the schools provided by them, or supplying additional public accommodation, they failed to comply with the requisition within the time specified by the Board of Education.

(3.) If the school board permitted any act in contravention of, or failed to comply with the regulations prescribed by the Elementary Education Act, 1870, with regard to schools provided by the board.

(4.) If the school board failed to perform their duty as a local authority under the Elementary Education Act, 1876.

(5.) If the school board failed to make bye-laws for their district with regard to the attendance of children at school.

When the Board of Education had declared a school board to be "in default," they were empowered to appoint any number of persons, not less than five nor more than fifteen, to be members of the school board; and on such appointment the persons who were previously members of the board were to be deemed to have vacated their offices. The members thus appointed might be remunerated for their services out of the school fund.

It was further provided that if in the opinion of the Board of Education the school board were in default, or were not properly performing their duties, they might direct that the then existing members of the board should cease to hold office, and might order a new election for supplying the vacancies.

When school boards were abolished, such remedies as those above referred to could not be applied to county councils and the councils of boroughs and urban districts who succeeded the school boards as Local Education Authorities and the provisions in that behalf were therefore repealed by the Education Act, 1902, and sec. 16 was substituted.

In 1904 the Education (Local Authority Default) Act, 1904, see p. 255, re-introduced a modification of the old practice, but sec. 16 was allowed to remain. See the note on p. 256; and also sec. 44 (5) of the Education Act, 1918, on p. 414.

In *Board of Education* v. *Rice* (p. 143, above), Lord Loreburn, L.C., said, "The Board of Education are authorised by sec. 16 of the Act of 1902 to make such order as they think necessary or proper for the purpose of compelling the Local Education Authority to fulfil its duty, if, after holding a public enquiry, they think it has failed to fulfil any of its duties under the Act of 1902. This is a perfectly distinct thing from what is prescribed by sec. 7 (3). It is designed to enable the Board of Education, if they think fit, to make an order and to enforce by application to the courts of law obedience to such order as they make make. It does not deal with the determination of disputes between

a Local Education Authority and managers, though if such dispute is decided one way and the Local Education Authority refuses to act in accordance with the decision, its refusal may be followed by an order under sec. 16 and by an application to the court to enforce it."

The case of *R.* v. *The Guardians of the Keighley Union* may be referred to as showing the procedure where a board of guardians, an elected representative body, refused to comply with regulations issued by the Local Government Board. In that case it appeared that the guardians had refused to comply with the regulations made by the Local Government Board under the Vaccination Acts, and direct the vaccination officer of the union to institute and conduct proceedings against persons who had neglected to cause their children to be vaccinated according to the provisions of the Acts referred to. A rule *nisi* was obtained on the 6th of May, 1875, for a *mandamus* commanding the guardians to give the necessary directions to the vaccination officer, and subsequently the rule was made absolute. To that writ six of the guardians made a return that they were desirous of obeying the writ, but, being in a minority on the board of guardians, were unable to pass the necessary resolution ; and the majority of the board of guardians made a return, in effect excusing themselves from obedience on the ground of their objection to vaccination. This return was demurred to and judgment was given for the Crown, and a peremptory writ of *mandamus* was issued against the board of guardians in the same terms of command as in the first writ. On the 20th February, 1876, a resoltuion was passed by the guardians in obedience to the peremptory writ, giving the necessary instructions to the vaccination officer, and this resolution of obedience was returned. On the 3rd of May following, however, the guardians resolved "that the board rescinds all portions of resolutions which have or can be construed into a general order to prosecute, and that instructions be given to the vaccination officer that the board reserves to itself the dispensation of the Vaccination Acts." Under these circumstances, a rule *nisi* was obtained against eight of the guardians of the union, they being the guardians who had voted in favour of the last-mentioned resolution, to show cause why an attachment should not issue for contempt of court. On the 3rd of July, 1876, on cause shown, the rule was made absolute against all the defendants, with the exception of one, who, it appeared, was not a member of the board of guardians until the 12th of April, 1876, and when he voted for the resolution rescinding that which was the return to the writ, was not aware of the terms of the *mandamus*, and finally a writ of attachment was issued. The defendants were arrested on the 7th of August, 1876, and were imprisoned in York Castle. They were imprisoned for about a month, and as, during their incarceration, the other members of the board passed a resolution to restore the instructions to the vaccination officer to the state in which they were when the guardians made their return of obedience, the defendants were released from prison on their own recognizances of £1,000 each and one surety until the sheriff surrendered them to the custody of the court. They were brought before the court on the 9th November, 1876, when it appeared that the defendants had pledged themselves that they would not be parties to any resolution which would rescind the resolution that had been passed in obedience to the *mandamus*, and the Solicitor-General having stated that the Local Government Board were content that the defendants should go out on their own recognizances to come up for judgment when called upon, and each of the defendants having agreed to be bound by his recognizance in £1000 to come up for sentence if he disobeyed the law, the defendants were discharged from custody.

The Lord Chief Justice (Cockburn), when the rule for an attachment

was made absolute, said: "There seems to be a mistaken notion that, when the Legislature by Parliament has enacted the law, it is still competent to persons who doubt or dispute the policy of that law to discuss whether it shall be put into execution or not. Now that is a state of things which is quite incompatible with the constitution and the law of this county. If Parliament has passed an Act, that Act is binding on every one. Persons who dispute the policy of such legislative enactments do their best, and they are justified in doing their best, to obtain a repeal or alteration of the law; but, as long as the law remains, and until it is repealed, it must be obeyed by every one indiscriminately, and if it is not obeyed, it is the business of courts of justice, and our business, to enforce it by punishment of those who break it."

Part IV.

GENERAL.

Education Committees.

17.—(1.) Any council having powers under this Act shall establish an education committee or education committees, constituted in accordance with a scheme made by the council and approved by the Board of Education: Provided that if a council having powers under Part II. only of this Act determine that an education committee is unnecessary in their case, it shall not be obligatory on them to establish such a committee. (1)

(2.) All matters relating to the exercise by the council of their powers under this Act, except the power of raising a rate or borrowing money, shall stand referred to the education committee, and the council, before exercising any such powers, shall, unless in their opinion the matter is urgent, receive and consider the report of the education committee with respect to the matter in question. The council may also delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers under this Act, except the power of raising a rate or borrowing money. (2)

(3.) Every such scheme shall provide—

(*a*) For the appointment by the council of at least a majority of the committee, and the persons so appointed shall be persons who are members of the council, unless, in the case of a county, the council shall otherwise determine;

(*b*) For the appointment by the council, on the nomination or recommendation, where it appears desirable, of other bodies (including associations of voluntary schools), of persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council acts;

(*c*) For the inclusion of women as well as men among members of the committee;

(*d*) For the appointment, if desirable, of members of school boards existing at the time of the passing of this Act as members of the first committee. (3)

(4.) Any person shall be disqualified for being a member of an education committee, who, by reason of holding an office or place of profit, or having any share or interest in a contract or employment, is disqualified for being a member of the council appointing the education committee, but no such disqualification shall apply to a person by reason only of his holding office in a school or college aided, provided, or maintained by the council. (4)

(5.) Any such scheme may, for all or any purposes of this Act, provide for the constitution of a separate education committee for any area within a county, or for a joint education committee for any area formed by a combination of counties, boroughs, or urban districts, or of parts thereof. In the case of any such joint committee, it shall suffice that a majority of the members are appointed by the council of any of the counties, boroughs, or districts out of which or parts of which the area is formed. (5)

(6.) Before approving a scheme, the Board of Education shall take such measures as shall appear expedient for the purpose of giving publicity to the provisions of the proposed scheme, and, before approving any scheme which provides for the appointment of more than one education committee, shall satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education. (6)

(8.) Any scheme for establishing an education committee of the council of any county or county borough in Wales or of the county of Monmouth or county borough of Newport shall provide that the county governing body constituted under the Welsh Intermediate Education Act, 1889, for any such county or county borough shall cease to exist, and shall make such provision as appears necessary or expedient for the transfer of the powers, duties, property, and liabilities of any such body to the Local Education Authority under this Act, and for making the provisions of this section applicable to the exercise by the Local Education Authority of the powers so transferred. (8)

Additional Statutory Powers.

Sec. 1 of the Education (Administrative Provisions) Act, 1909 (p. 335), provides as follows :—

(1.) The provisions of sec. 17 of the Education Act, 1902, requiring that all matters relating to the exercise by a Local Education Authority or council having powers under that Act of their powers under that Act shall stand referred to the education committee constituted under that section, and enabling the Local Education Authority or council to delegate

to the education committee so constituted any of their powers under that Act, shall apply not only with respect to the powers conferred on the Local Education Authority or council under that Act, but also to any powers connected with education conferred by or under any other Act, scheme, or order, on the authority or council, expressly as a Local Education Authority or as a council having powers under the Education Act, 1902, except the power of raising a rate or borrowing money. (2)

Sec. 7 of the Education (Administrative Provisions) Act, 1907, provides as follows:—

(7.) A scheme providing for the constitution of a joint education committee, under sec. 17 (5) of the Education Act, 1902, may make provision for the proportions in which any expenditure on matters referred or delegated to that committee is to be borne as between the councils of the counties, boroughs, or urban districts, or parts thereof forming the area for which the joint committee is constituted.

Expenses of an Education Committee: Audit.

Sec. 6. of the Education (Administrative Expenses) Act, 1907 (p. 267) provides—Where any receipts or payments of money under the Education Acts are entrusted to any joint education committee established under sec. 17 of the Education Act, 1902, or to any joint body established under sec. 52 of the Elementary Education Act, 1870, or otherwise established by two or more local authorities, the accounts of those receipts and payments (unless otherwise directed) are to be audited as if the joint committee or body were a separate Local Education Authority.

Note 17.—(1.) Under this section the council of every county and of every county borough and also the council of every non-county borough with a population of over 10,000 and of every urban district with a population of over 20,000 had to establish an education committee or education committees constituted in accordance with a scheme made by the council and approved by the Board of Education, except when the council of a non-county borough or district under the powers conferred by sec. 20 (*b*) relinquished in favour of the council of the county their powers as to elementary education.

The councils who have powers under Part II. only of the Act are the councils of non-county boroughs or urban districts who have no powers under Part III., but who, under sec. 3, are empowered to expend money, for the purpose of supplying or aiding the supply of education other than elementary, and in these cases it is not obligatory on them to establish an education committee if they determine that such a committee is unnecessary.

As to schemes for the establishment of education committees, see notes to sub-secs. 3-8.

As to grounds of objection to a scheme, see note to sub-sec. 6.

The scheme which by sec. 17 is required to be made for the establishment of an education committee may for all or any purposes of the Act provide for the constitution of a joint education committee for any area

formed by a combination of counties, boroughs, or urban districts, or of parts thereof. The Board of Education have suggested that the formation of such committees might be convenient in the case of boroughs or urban districts which may not desire to relinquish permanently their powers under the Act, but may nevertheless desire to work in close co-operation with the county in which they are situated. In the event of a relinquishment by the council of a non-county borough or urban district of their powers under this section in favour of the county council it would be possible for the county to transfer back to the borough or urban district their powers of management in respect of any school or college within the area of the relinquishing council under sec. 20 (*a*).

A Local Education Authority made a scheme for the establishment of an education committee under sec. 17 (1), which was duly approved by the Board of Education. Among other things the scheme provided that the council should determine the order of retirement of the members of the Committee and they passed a resolution doing so. Subsequently they passed a second resolution by which they purported to vary the order of retirement. It was held by Buckley, J., that the Council having by the first resolution determined the order of retirement, was *functus officio*, and that the subsequent resolution altering that order was *ultra vires* and invalid. But the scheme itself may be revoked and an entirely new scheme made under the provisions of sec. 21 (3). (*Milward* v. *Barry Urban District Council* (1904), 2 Ch. 481; 2 L.G. R. 1222.)

(2.) Every matter relating to the exercise by the council of their powers under the Act, or under any other Act, scheme or order, except the power of raising a rate or borrowing money, is to stand referred to the education committee, and the council before exercising any of their powers are, unless they consider that the matter is urgent, to receive and consider the report of the education committee with respect to the matter in question.

The council have also the widest power as regards delegation of their powers to the education committee, except those with respect to the raising a rate or the borrowing of money. Any of their powers with the exceptions referred to may be delegated to the education committee with or without any restrictions or conditions as they think fit.

A memorandum issued by the Board of Education, which referred to certain powers and duties of county councils summarised the position of the council with regard to the education committee as follows: "The council

"*Must* refer every educational matter to the committee except the raising a rate or borrowing money;

"*May*, in case of urgency, act without awaiting the report of the committee;

"*May* delegate, on any terms it pleases, its powers under the Act to the committee; but

"*Must not* delegate its powers of raising a rate or borrowing money.

Under all circumstances the council is responsible, whether for its own action or for that of the committee."

As to the effect of delegation see the note to sec. 6 (1), of the Education Act, 1918, p. 357.

(3.) By sec. 23 it is provided that a woman is not disqualified either by sex or marriage from being on any education committee under the Act.

As regards the appointment of persons of experience in education and of persons acquainted with the needs of the various kinds of schools for which the council act, they may be selected by the council from amongst their own members or from outside the council, or may

be appointed on the nomination or recommendation of other bodies where it appears desirable.

No qualification by rating or residence is required for persons appointed from outside the council.

With reference to the nomination or recommendation of other bodies the Board of Education in the memorandum above referred to stated as follows :—

"It is probable that the representation of certain educational interests within the area of a council may be effected most satisfactorily by the nomination of a member to the committee by some society within the area or representative of some educational interest within the area. This course may save the council some trouble in selection, and may also be most satisfactory to the society which is to be represented. In other cases it might be more convenient that a society should be invited to recommend a representative, or to recommend certain persons from among whom the council might choose a representative. In the case of nomination it must be assumed that the council places itself in the hands of the body whom it invites to nominate. In the case of recommendation, suggestions might be made on both sides with a view to the choice of some one acceptable to the council and representative of the interest concerned. In each case the appointment is made by the council, but either method would ensure that the person appointed was considered to be really representative by the interest concerned."

The memorandum contained suggestions as to the main matters which should be provided for by schemes, and alternative forms of clauses to meet the different cases, as may be determined by the council.

The Board of Education stated, "All matters relating to the proceedings of the education committee are matters which are more properly determined by the appointing council under paragraph (1) of the Frist Schedule to the Act than determined by the scheme. The powers to be exercised, and the duties to be performed, by the council so far as they are not regulated by the Act, are also matters which should be regulated by the council from time to time, and should not be included in the scheme. The same remark applies with even greater force to any provision in the scheme as to the delegation of powers."

Disqualification for being on a Committee.

(4.) As regards disqualification by reason of holding an office or place of profit, or having any share or interest in a contract or employment, the provisions of sec. 12 of the Municipal Corporations Act, 1882, apply to members of the council of a borough, and also to members of a county council by operation of secs. 2 and 75 of the Local Government Act, 1888.

Sec. 12 of the Municipal Corporations Act provides as follows :—

A person shall be disqualified for being elected and for being a councillor if and while he—

(*a*) Is an elective auditor, . . . or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council . . .

(*c*) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council.

But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in

(*a*) Any lease, sale, or purchase of land, or any agreement for the same ; or

(*b*) Any agreement for the loan of money, or any security for the payment of money only ; or

(*c*) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted ; or

(*d*) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough ; or

(*e*) Any railway company, or any company incorporated by Act of Parliament or Royal Charter, or under the Companies Act, 1862.

The Local Government Act, 1894, with reference to disqualifications of members of urban district councils other than the councils of boroughs, by sec. 46, provides as follows :—

A person shall be disqualified for being elected or being a member of a council of a district other than a borough if he . . .

(*a*) Holds any paid office under the . . . district council ; . . .

(*e*) Is concerned in any bargain or contract entered into with the council . . . or participates in the profit of any such bargain or contract, or of any work done under the authority of the council.

Provided that a person shall not be disqualified for being elected, or being a member or chairman of any such council by reason of being interested—

(*a*) In the sale or lease of any lands, or in any loan of money to the council . . .

(*b*) In any newspaper in which any advertisement relating to the affairs of the council . . . is inserted ; or

(*c*) In any contract with the council . . . as a shareholder in any joint stock company . . .

When the council of a county or of a borough appoint the education committee, a person who, under the provisions of secs. 2 and 75 of the Local Government Act, 1888, and sec. 12 of the Municipal Corporations Act, 1882, is disqualified for being a member of the council of the county or borough by reason of holding an office or place of profit or having any share or interest in a contract or employment is also disqualified for being a member of the education committee.

When the council of an urban district, other than a borough, appoint the education committee, the provision applies to a person who on like grounds is disqualified under sec. 46 of the Local Government Act, 1894, for being a member of the council of the district.

No disqualification applies to a person by reason of his holding office in a school or college aided, provided, or maintained by the council. This saving, which refers to a person holding office in a school or college for higher education or a public elementary school, only applies to the education committee and not to the council appointing the committee.

Cases on Disqualification.

In connection with the question as to the disqualifications which arise under the statutes above mentioned, the following cases may be referred to :—

In *R.* v. *Francis* (18 Q. B. 526 ; 21 L. J. Q. B. 304 ; 16 Jur. 1046), it appeared that F., at the request of the mayor and town clerk, in 1843, undertook to collect, arrange, and bind the books, &c., of the corporation. The remuneration was not then fixed. F. was elected a town councillor in 1846, and in 1849, while still engaged in the undertaking, he agreed to complete the work for £150 as the amount of his actual disbursements and expenses. The offer was accepted by the town council, and a minute was made of a resolution by them to that effect, but the corporate seal was not affixed to the resolution or any minute of it, and no contract under the corporate seal was entered into between the corporation and F. In July, 1849, he received £50 on account, and in November, 1849, he was re-elected a councillor of the borough. He received no payment after that in July, 1849, and had

not proceeded with his undertaking after his election. It was held, however, that there was a "contract," and that F. was disqualified by operation of the 5 & 6 Wm. 4, c. 76, sec. 28, which provided that a person should not be qualified to be elected or to be a councillor of a borough during such time as he should have directly or indirectly any share or interest in any contract or employment with, by, or on behalf of the council.

In *Le Feuvre* v. *Lankester* (3 E. & B. 530; 23 L. J. Q. B. 254; 18 Jur. 894), it appeared that the town council, as the local board of health, ordered certain works to be done, in the course of which it was necessary to erect some lamps and a considerable quantity of iron railing. The superintendent of the works ordered this iron work at a foundry belonging to an alderman of the borough and his partner (Messrs. Lankester), and they supplied it. The greater part of the work was let to contractors who were to supply the iron work, and it was the contractors who paid Messrs. Lankester for this part of the iron. A few small articles were for extra work not included in the contract, and for these the town council or local board of health paid Messrs. Lankester direct. It did not appear that, at the time the goods were supplied, Messrs. Lankester were aware that any part consisted of extras. It was held that this was not an interest in a contract which disqualified. Coleridge, J.: In the present case, all that is asserted is that the defendant, in the course of his trade, sold certain iron work which was used in carrying out the contract. There is no attempt to show fraud or any previous concert between the defendant and the contractor by which the defendant was to have the benefit of the contractor's custom. This gives the defendant no share or interest in the contract, the existence of which neither affects the price of his goods nor the manner in which he is to be paid for them.

In a case, however, where a Turnpike Act contained a clause prohibiting any trustee from having any share or interest in or being in any manner directly or indirectly concerned in any contract or bargain for making or repairing or in any way relating to the road for which he acts, and from letting out any waggon, horse, &c., for the use of the road, and a trustee of the road let his horse and cart for a certain sum to a contractor for works on the road, to be used in the performance of the works, the defendant was held liable to the penalty: *Towsey* v. *White* (5 B. & C. 125).

In *West* v. *Andrews* (5 B. & Al. 328), the proceedings were taken under sec. 6 of 55 Geo. 3, c. 137, which rendered liable to a penalty any person in whose hands the management, control, or direction of the poor was placed who either in his own name, or in the name of any other person, provided, furnished, or supplied for his own profit any goods, materials, or provisions for the support and maintenance of the poor of the parish for which he retained his appointment, or was concerned directly or indirectly in supplying the same, or in any contract or contracts relating thereto, and a guardian having sold five live sheep to the person who had the contract for the supply of meat, &c., for the poor, it was held that the case fell both within the words and spirit of the Act.

In *Nicholson* v. *Fields* (7 H. & N. 810; 31 L. J. Ex. 233), F. was a commissioner under the local Act, which provided that a person who, after his appointment as a commissioner, should be concerned or participate in any manner in any contract, should thenceforth cease to be a commissioner. It was proved by the minute book of the commissioners, and the production of bills signed by F., that in August, 1859, F. was paid by the commissioners £5 13*s.* 1*d.* for timber supplied by him to the commissioners in 1858 and 1859. In November, 1859, he received a further sum of £2 1*s.*, and in May, 1860, £2 19*s.* 10*d.* He also sent to

the commissioners an invoice for 4*s*., for lime supplied on 30th March, 16th May, 17th July, and 17th August, 1860. The course of business was for the surveyor of the commissioners to order the materials, and the production of the invoice with the defendant's signature at the bottom was warrant for payment. It was held that F., by being concerned in a contract, had become disqualified, and that the invoice for the 4*s*. for the lime was evidence from which the jury might find that the defendant was concerned or participated in a contract within the meaning of the Act. Pollock, C.B. : This case differs from *Woolley* v. *Kay* (1 H. & N. 307; 25 L. J. Ex. 351), where some members of the court expressed an opinion that a mere casual buying and selling, as, for instance, going into a shop and buying an article, and paying for it over the counter, would not be a contract or bargain for furnishing, supplying, or selling an article, so as to render the party liable to a penalty if he continued to act as a commissioner. Here there were several invoices, one of them showing a dealing which extended over four months. The amount is trifling, but that is immaterial, for it was intended that every description of dealing by the commissioners should be put an end to so far as legislation could do it, and that the party to a contract should be rendered incapable of exercising the office of commissioner—in other words of dealing with himself. Martin B. : A case was put of the commissioners buying some trifling article at a shop kept by one commissioner, and paying for it over the counter. It seems to me that this is not a contract within the statute, but I am by no means prepared to say that if articles were to be supplied from time to time on credit, there would not be a contract. The buying a pennyworth of nails may not be a contract, but that is different from supplying lime on credit. Here there was evidence of a continuous dealing and supplying on credit of an article which the commissioners must buy.

Cox v. *Ambrose* (60 L. J. Q. B. D. 114), was a case under the Municipal Corporations Act, 1882. Sec. 12 of that Act provides, *inter alia*, that "a person shall be disqualified for being elected and for being a councillor if and while he . . . (*c*) has directly or indirectly by himself or partner any share or interest in any contract or employment with, by, or on behalf of the council." The respondent was a member of a firm interested in certain continuing contracts with a corporation of a borough unexpired at the time of a municipal election for that borough. Before offering himself as a candidate at the election the respondent dissolved partnership, and assigned all his interest in these contracts to the other partner, remaining liable, however, on bonds securing the due performance of the contracts. The corporation was not a party to the assignment and gave no assent thereto, nor did they release the respondent from the contracts. The respondent's connection with the contracts, and the fact that his candidature was objected to on that ground, were matters of notoriety in the ward for which he was a candidate. On a petition against his return as a councillor, it was held that the respondent was not qualified to be elected within the meaning of the above section, and that votes given for him were thrown away.

In *Fletcher* v. *Hudson* (L. R. 7 Q. B. 611; 51 L. J. Q. B. 48; 46 L. T., N. S., 125; 30 W. R. 349), an hotel keeper received in March, 1879, £9 19*s*. 6*d*. from the local board, of which he was a member, to reimburse him for work done by him in 1877 and 1878 for the surveyor of the board. He did the work, not by any arrangement expressed or implied with the local board, but at the request of the surveyor because the surveyor was unable to get the work done by any one else in the time, and delay would have occasioned great expense. It was stated that he made no profit out of the transaction. The last

item in the account, which was paid in March, 1879, was dated 16th March, 1878. By the Public Health Act, 1875 (38 & 39 Vict., c. 55), any member of a local board who "in any manner is concerned in any bargain or contract entered into by such board" shall cease to be such member. It was held that there was ample evidence of a contract with the local board in 1878 for the work which was then done and of the defendant being concerned in the contract.

In the case of *Tomkins* v. *Joliffe* (51 J. P. 247), which came before Mr. Justice Field on the 4th April, 1887, an action was brought to recover from the defendant penalties which he was alleged to have incurred by reason of having acted as a member of the Sandown Local Board after he had become disqualified by reason of his having been concerned in a contract entered into by the local board. The defendant was elected a member of the board in April, 1884, for a period of three years. In March, 1885, the local board entered into a contract with C., by which C. undertook to make certain alterations of gas fittings in the town hall for £15. In order to effect these alterations it was necessary that scaffolding should be erected. C., who was an ironmonger employed the defendant, a builder, to erect the scaffolding, and the defendant charged C. the sum of £1 16*s*. C. delivered to the local board an account for £15 for the work done, including a charge for the £1 6*s*. in respect of the work done by the defendant. In April, 1885, the defendant acted as a member of the board. The plaintiff claimed that under and by reason of the circumstances the defendant had become disqualified, and was liable to pay the penalty sued for, viz., £50 and costs. It was stated that though the defendant sent in his bill to C., when he found that the chairman of the local board raised an objection, he withdrew the bill and had received no payment whatever for what he had done. The defendant was held to have been "concerned" in the contract in question, and judgment was given for the plaintiff for £50 with costs.

In *Tanfield* (App.) v. *Reynolds* (Resp.) (39 J. P. 293), an information was preferred against the appellant charging him with having in March, 1874, he then being a member of the school board for the borough, shared and been concerned in the profits of a contract with the board. It was proved that for three years up to the month of January, 1874, the appellant (who was a printer in partnership with Orchard) was a member of the school board, and was a candidate for re-election at the triennial election of the board in that month, and was duly re-elected a member of the new board. Previous to the election the appellant received from the mayor (who was the returning officer of the election) some of the orders for printing the necessary documents and forms required for the election, but none of the items in the appellant's accounts were ordered by the school board, nor did the school board exercise any control or authority over the returning officer with respect to the orders he gave, or in any way interefere with the giving of the orders. After the election the whole of the tradesmen's accounts were sent to the mayor, and were examined by the town clerk (including that of the appellant and Orchard his partner, amounting to £11 8*s*.) and they were afterwards forwarded to the school board, and were examined by the finance committee of the board, of which the appellant was a member, and were subsequently paid by cheques of the board on their treasurer out of the school fund. It was admitted by the appellant that he was in partnership with Orchard, and received a share of the profits on the account. The justices having convicted, the Court of Queen's Bench held that the evidence was quite sufficient to justify the conviction.

In *Nutton* v. *Wilson* (L. R. 22 Q. B. D. 744; 58 L. J. Q. B. 443; 37 W. R. 522), an action was brought to recover a penalty of £50 under

the Public Health Act, 1875, from the defendant, on the ground that whilst a member of a local board he had been concerned in two contracts made by the local board, and had acted as a member after being disqualified by reason of having been so concerned. The defendant, who was a joiner, was elected a member of the local board in 1885. In October, 1886, the local board entered into a contract with H. for the supply of warming apparatus for the offices of the local board. H. found that certain joiner's work was necessary in the course of fitting up this apparatus, and he went to the defendant's shop and asked his foreman to do it. The work was done by the defendant's workmen, and the bill for it to the amount of £1 9s. was paid by H. to the defendant. In December, 1886, the local board contracted with one B. for the supply of a water-tank, and similar transactions took place between B. and the defendant, the defendant's bill, amounting to £3 14s., being paid to him by B. Mr. Justice A. L. Smith considered that he was bound by the decision of Mr. Justice Field in *Tomkins* v. *Joliffe*, and gave judgment for the plaintiff. The defendant appealed. It was contended for the appellant that he was not in any manner concerned in the contracts: he had only indirectly assisted in carrying them out after they were made. For the respondent it was urged that the defendant himself moved the acceptance of the contracts of H. and B., and therefore knew of the contracts. The work was done on the premises of the local board, and in one case the defendant received the invoice. The Court of Appeal dismissed the appeal, the Master of the Rolls observing, "Here a member of a local board whilst acting as such has done part of the work which contractors with the board had contracted with them to do. As he did part of the work under the contracts, and was paid for the work that he did, it is impossible to say that he was not in any way concerned in these contracts."

In *Hunnings* v. *Williamson* (L. R. 11 Q. B. D. 533; 52 L. J. Q. B. 416; 49 L. T., N. S., 361; 32 W. R. 267; 48 J. P. 132), the brother of the defendant entered into a contract with a vestry under the Metropolis Management Act, 1855, and in order to enable him to carry it out borrowed money from the defendant, who by way of security took an assignment of the contract. The defendant subsequently was elected a member of the vestry. It was held that the defendant was interested in a contract with the vestry.

In *Barnacle* v. *Clark* ([1900] 1 Q. B. 279; 69 L. J. Q. B. 15; 48 W. R. 336; 81 L. T. 484; 64 J. P. 86), an information was laid against C., who was a member of a school board, charging him that whilst such member he shared or was concerned in the profits of a bargain or contract with, or certain work done under the authority of the school board or managers appointed by them, by supplying sand and gravel to Traynar, a builder who at the time was a contractor for the building of schools at S. It was proved that C. supplied sand and gravel to Traynar, who was under a contract in writing with the school board for the building of schools at S., that to the knowledge of C. the sand and gravel were sold to Traynar to be used by him in the building of the schools, that part of the sand and gravel was delivered by C. at the site of the schools and that part was fetched from the sand pits of C. by Traynar. A receipt in the handwriting of C. for the price of the sand and gravel was produced. It was not suggested that C. had made any excessive profit out of the sand and gravel supplied, and it was contended that the only place at S. where sand and gravel could be purchased was the sandpit of C., and that if C. had not supplied it the contractor would have had to go some miles to obtain a supply, which would have been more expensive in consequence of the cartage. Traynar obtained the sanction of the architect before using the sand and gravel of C., and Traynar only paid the regular charges for them. C.

was previously a stranger to him. The justices, on these facts, held that C. had not been guilty of any offence under sec. 34 of the Act and dismissed the information. On a case stated by the justices it was held by the Court (Ridley and Darling, JJ.) that the decision of the justices was wrong, and that the case should be remitted to them with an intimation to that effect. Ridley, J., said: "It is clear that the respondent was concerned in 'work done under the authority of the board,' for he supplied goods for doing the work. The words 'concerned in' are general words, but in my opinion they clearly cover the supply of materials for carrying out the work."

With respect to the provision in sec. 12 of the Municipal Corporations Act, 1882, as to the disqualification of a person "if and while he," etc., see the case of *Lewis* v. *Carr* (L. R. 1, Ex. 484), which had reference to the provision in the 5 & 6 Will. IV., c. 76, sec. 28: "Nor shall any person be qualified to be elected or to be a councillor of any such borough or an alderman of any such borough . . . *during such time* as he shall have directly or indirectly," etc. In that case the defendant was a tallow-chandler, and in the year 1874, while holding the office of alderman of the borough, he sold goods on several occasions to the corporation on orders drawn up by the waterworks committee of the council and approved by the council and sent by them to the defendant's place of business. Payment was made at intervals by orders signed by three members of the council and countersigned by the town clerk. In May, 1875, the defendant acted on five several occasions as alderman, and penalties were sought to be recovered. At that time all the goods that had been supplied by the defendant to the council had been paid for, and there were no outstanding transactions between them. It was held by the Court of Appeal, confirming the decision of the Exchequer Division, that the disqualification of any person who has any interest in a contract with the council of a borough to be elected or to be an alderman or councillor of the borough applies only during the continuance of the contract, and that by becoming interested in such a contract an alderman or councillor does not cease to be qualified or become disqualified so as to incur penalties for acting after the determination of the contract.

A member of a board of guardians agreed with the board to collect rent due to them in respect of a certain house. There was no express agreement as to fee or commision for so doing. He collected the rent until the house was sold and then paid it to the board, less a sum which he claimed as commission but which he subsequently paid over. After receiving it the board declared the member's office vacant under sec. 46, 1 (*e*) Local Government Act, 1894. Held by the King's Bench Division that the fact that before the declaration of vacancy the employment had terminated and the amount of the commission had been paid to the board did not prevent him from being disqualified. (*Rex* v. *Rowlands* (1906), 2 K. B. 292).

In *Cox* v. *Truscott* (92, L. T. 650; 3 L. G. R. 431), a borough council as the Local Education Authority, agreed with the trustees of a voluntary school to repay to them money expended by them on the purchase of goods for the school. A member of the Council supplied such goods to the trustees, knowing that they would be ultimately paid for by the council. In an action to recover penalties from the member, under sec. 41 (1) of the Municipal Corporation Act, 1882, it was held that he became disqualified for his office under sec. 12 (1) (*c*) of that Act, as being interested in the contract between the council and the trustees; that the disqualification ceased as soon as he had supplied the goods, though he might not have been paid for them; and that he incurred no penalty for acting as a member of the council after his disqualification had thus ceased for he did not in such case act "after becoming disqualified," within the meaning of sec. 41 of the Act.

It was held by the Judicial Committee of the Privy Council in a New South Wales case that a person holding a civic office was not liable to a penalty as being knowingly interested in a contract with his municipality when he had merely supplied materials to a contractor who had chosen to buy them from him without any concerted arrangement that he should do so. (*Norton* v. *Taylor* (1906), A.C. 378).

In *Laughton* v. *Port Erin Commissioners* (1910, A.C. 565). Certain Commissioners agreed to purchase land for a public purpose. The fact that one of them was the eldest son of a landowner whose property would be improved by the proposed purchase and that he acted for his father in negotiations with the commissioners was held not to make him "concerned" in the contract within the meaning of the local Act.

In *Carmichael* v. *Aberdeen School Board* (1916, S.C. 614, Court of Session), a retired school teacher in receipt of a pension was held not to be a person holding an "office of profit" within sec. 21 of the Education (Scotland) Act, 1878, and therefore not disqualified from becoming a member of that school board.

See also *Pope* v. *Backhouse* (8 Taunt 239), *Barber* v. *Waite* (1 A. & E. 514), and *Davies* v. *Harvey* (43 L. J. M. C. 121, 30 L. T., N. S., 629) with respect to guardians supplying goods and materials.

With regard to the provision in sec. 46 of the Local Government Act, 1894, that a person shall not be disqualified by being interested in the sale or lease of any lands or in any loan of money to the council, it is to be noted that the Public Health Act, 1875, Rule 64, Sch. II. provided that "no person shall vacate his office by reason of his being interested in the sale or lease of lands or in any loan of money to the local board," and that it was held in *R.* v. *Gaskarth* (L. R. 5 Q. B. D. 321; 49 L. J. Q. B. 509; 42 L. T., N. S., 688; 28 W. R. 596), with reference to these words, that "to the local board" only applied to any loan of money, and that a person who held a lease from a local board of a sewage farm with the ordinary convenants in the lease, was not disqualified for holding office as a member of the local board.

In a case in which the Local Government Board were called upon to decide an appeal against the allowance by the auditor of a sum charged in the accounts of a school board as paid for four certificates of birth furnished to the school board by the superintendent registrar, who was a member of the school board, it was contended that as, at the time of supplying the certificates, and at the date of payment, the superintendent registrar was a member of the school board, the payment was by operation of this section illegal. The Board stated that they were of opinion that sec. 34 (now repealed) of the Education Act, 1870, did not apply to fees such as those paid in this case, but rather had reference to the profits of work voluntarily undertaken. In such a case there was no bargain or contract, and the superintendent registrar could not refuse to give the certificates, which were obtained upon payment of fixed fees. The Board accordingly held that the district auditor was right in allowing the charge.

Schemes for constituting Committees for Separate Areas.

(5.) With regard to the constitution of a separate education committee *for any area in the county*, it will be observed from sub-sec. (6) that the Board of Education before approving any scheme which provides for the appointment of more than one education committee are to satisfy themselves that due regard is paid to the importance of the general co-ordination of all forms of education.

The Board of Education stated in their memorandum on the Act:—

"It would not be desirable to perpetuate the severance of elementary from higher education by the creation of separate committees for each. But it may often be convenient to establish sub-committees which might, under the supervision of the education committee, administer the various forms of education."

As to the appointment of sub-committees by the education committee, see Sch. I. (6), which enables the committee, subject to any directions of the council, to appoint such and so many sub-committees consisting either wholly or partly of members of the committee as the committee may think fit.

As regards the provision that a scheme may provide for a joint education committee for any area formed by a combination of counties, boroughs, or urban districts or any part thereof, the Board of Education in their memorandum stated as follows:—

"In the case of such a joint committee it is necessary that a majority of the members should be *appointed* by the councils of the counties, boroughs, or districts concerned; it does not appear necessary that a majority should be *members* of those councils.

"The formation of such committees may be convenient in the case of boroughs or urban districts which may not desire to relinquish permanently their powers under the Act, but may, nevertheless, desire to work in close co-operation with the county in which they are situated."

See also sec. 7 of the Education (Administrative Provisions) Act, 1907, p. 268, as to provision being made for the proportions in which any expenditure on matters referred or delegated to the education committee is to be borne as between the various councils.

(6.) Where a scheme for the establishment of an education committee has been submitted by the Local Education Authority to the Board of Education, and is not approved by them, there is no duty imposed upon the Board by sec. 17 (6) to publish the scheme. (*Ex parte Cardiff Corporation* (1904), 20 T. L. R. 317.)

As to the appointment of more than one committee for any area within a county, see note on sub-sec. (5).

The Board of Education in their memorandum state that "a ground on which the Board might be asked to withhold their approval of a scheme would be the non-representation or inadequate representation of some of the education interests within the area. An educational body or association might complain—

"(*a*) That the interests with which it was concerned were wholly unrepresented;

"(*b*) That the person chosen to represent it was not really representative;

"(*c*) That no security was afforded by the scheme for the continuance of its representation.

"Points such as these should be carefully considered in framing a scheme.

A scheme when approved by the Board of Education has effect as if it were enacted in the Act, and any such scheme may be revoked or altered by a scheme made in like manner and having the same effect as the original scheme (see sec. 21 (3)), and the cases on pp. 202-3.

As to the meetings, proceedings, etc., of an education committee see Sch. I. to this Act, p. 213.

Contracts of the Committee.

As the education committee are not a corporate body with a common seal, it is necessary when a contract requires sealing that the seal of the council should be affixed.

An amendment which was proposed when the Bill was in committee,

providing for the payment of the 'reasonable travelling expenses of the members of the education committee, was negatived. As to such expenses in the case of education meetings, conferences, etc., see sec. 38 of the Education Act, 1918, p. 405.

(8.) The powers transferred by this sub-section were those of the county governing bodies who administered the Welsh Intermediate Education Act. These were not transferred to the education committees, but to the Local Education Authorities.

Expenses.

18.—(1.) The expenses of a council under this Act shall, so far as not otherwise provided for, be paid, in the case of the council of a county out of the county fund, and in the case of the council of a borough out of the borough fund or rate, or, if no borough rate is levied, out of a separate rate to be made, assessed, and levied in like manner as the borough rate, and in the case of the council of an urban district other than a borough in manner provided by section thirty-three of the Elementary Education Act, 1876, as respects the expenses mentioned in that section : (1) Provided* that—

(*a*) The county council may, if they think fit (after giving reasonable notice to the overseers of the parish or parishes concerned), charge any expenses incurred by them under this Act with respect to education other than elementary on any parish or parishes which, in the opinion of the council, are served by the school or college in connection with which the expenses have been incurred ; (2) and

(*b*) The county council shall not raise any sum on account of their expenses under Part III. of this Act within any borough or urban district the council of which is the Local Education Authority for the purposes of that Part ; (3) and

(*c*) The county council *may* charge such portion as they think fit, not being . . . more than three-fourths, of any expenses incurred by them in respect of capital expenditure or rent on account of the provision or improvement of any public elementary school on the parish or parishes which, in the opinion of the council, are served by the school ; and (4)

(*d*) The county council *may* raise such portion as they think fit, not being . . . more than three-fourths of any expenses incurred to meet the liabilities on account of loans or rent of any school board transferred to them, exclusively within the area which formed the school district in respect of which the liability was incurred, so far as it is within their area. (5)

*The provisoes (*a*) to (*d*) to sub-sec. (1) do not apply to London, see Sch. I., 4 of the Education (London) Act, 1903, p. 236.

(2.) All receipts in respect of any school maintained by a Local Education Authority, including any parliamentary grant, but excluding sums specially applicable for purposes for which provision is to be made by the managers, shall be paid to that authority. (6)

(3.) Separate accounts shall be kept by the council of a borough of their receipts and expenditure under this Act, and those accounts shall be made up and audited in like manner and subject to the same provisions as the accounts of a county council, and the enactments relating to the audit of those accounts and to all matters incidental thereto and consequential thereon, including the penal provisions, shall apply in lieu of the provisions of the Municipal Corporations Act, 1882, relating to accounts and audit. (7)

(4.) Where under any local Act the expenses incurred in any borough for the purpose of the Elementary Education Acts, 1870 to 1900, are payable out of some fund or rate other than the borough fund or rate, the expenses of the council of that borough under this Act shall be payable out of that fund or rate instead of out of the borough fund or rate. (8)

(5.) Where any receipts or payments of money under this Act are entrusted by the Local Education Authority to any education committee established under this Act, or to the managers of any public elementary school, the accounts of those receipts and payments shall be accounts of the Local Education Authority, but the auditor of those accounts shall have the same powers with respect to managers as he would have if the managers were officers of the Local Education Authority. (9)

Additional Statutory Powers.

Sec. 14 (2) of the Education (Administrative Provisions) Act, 1907, enacts as follows :—

For the purposes of sec. 18, 1 (*c*) of the Education Act, 1902, the county council may treat any expenses incurred by them in providing means of conveyance for teachers or children attending a public elementary school under sec. 23 (1) of the Education Act, 1902, in the same manner as they may treat the capital expenditure mentioned in the said paragraph (*c*).

Sec. 5 of the Education (Administrative Provisions) Act, 1907, enacts as follows :—

If the Local Government Board by order declare that expenses incurred for particular purposes specified in the order may or may not be properly treated under sec. 18 of the Education Act, 1902, as expenses incurred in respect of capital expenditure, no question shall be raised on audit as to the treatment of expenses incurred for those particular purposes if they are treated in accordance with the order.

Sec. 36 of the Education Act, 1918, enacts as follows :—

(1.) It shall not be obligatory on a county council to charge or raise within particular areas any portion of such expenses as are mentioned in para. (*c*) or para. (*d*) of sec. 18 (1) of the Education Act, 1902, and

accordingly each of those paras. shall have effect as if for the word "shall" there was substituted the word "may" and as if the words "less than one half or" were omitted therefrom; and, where before the passing of this Act any portion of such expenses has been charged on or allocated to any area, the county council may cancel or vary the charge or allocation.

[The amendments have been made in paras. (*c*) and (*d*) of sec. 18 above.]

(2.) Before charging any expenses under sec. 18 (1) (*a*) of the Education Act, 1902, on any area situate within a borough or urban district the council of which is an Authority for the purposes of Part III. of the Education Act, 1902, a county council shall consult the council of the borough or urban district concerned.

Note 18.—(1.) The section refers to the expenses under the Act which are to be defrayed out of rates, not being "otherwise provided for." The main sources of income other than from rates are the payments from the parliamentary grants subject to conditions laid down by the Board of Education, the amounts which would have been received by school boards under the Agricultural Rates Acts, and payments received for the use of schools provided by the Local Education Authority when not required for school purposes.

In the case of a county or county borough there will also be available the residue under sec. 1 of the Local Taxation (Customs and Excise) Act, 1890. See note on sec. 2, *ante*.

See also sec. 13 of the Act as to moneys arising from an endowment for the purposes of a public elementary school.

It will be observed from sub-sec. 2 of this section that all receipts in respect of any school maintained by a Local Education Authority, including any parliamentary grant, but excluding sums specially applicable for purposes for which provision is to be made by the managers, are to be paid to that authority.

Under sec. 26 (2) of the Education Act, 1918, in view of the abolition of fees in public elementary schools, the Board of Education will in each year, during a period of five years from the appointed day (*i.e.* the 1st April, 1919), out of moneys provided by Parliament, pay to the managers of a school maintained but not provided by a Local Education Authority in which fees were charged immediately before the appointed day the average yearly sum paid to the managers under sec. 14 of the Education Act, 1902, during the five years immediately preceding the appointed day, p. 386.

Sec. 14 is repealed by the Act of 1918, but its terms were as follows: "Where before the passing of this Act fees have been charged in any public elementary school not provided by the Local Education Authority that authority shall, while they continue to allow fees to be charged in respect of that school, pay such proportion of those fees as may be agreed upon, or, in default of agreement, determined by the Board of Education, to the managers."

The Local Government Board being consulted as to the application of the rent receivable by a Local Education Authority in respect of premises in a parish acquired for the purpose of a site for a school and temporarily let stated that the rent must be credited to the account of the entire area for which the Local Education Authority acted for the purposes of elementary education. It did not seem to the Board to be competent to the Local Education Authority to apply the rent in diminution of the amount charged on the parish in respect of capital expenditure for the purchase of the premises in pursuance of sec. 18 of the Education Act, 1902. (*Local Government Chronicle*, 26th February, 1916.)

In connection with the expenses of a council it will be borne in mind that when under sec. 20 (*b*) of the Act any council relinquish their powers and duties in favour of a county council any liabilities incurred for the purpose of the performance of the duties relinquished including any liabilities incurred under any local act or trust deed will be transferred to the County Council (Sch. II. (2)).

See also sec. 17 (8) as to liabilities of the county governing bodies under the Welsh Intermediate Education Act, 1889.

The expenses of the council under the Act *in the case of a county*, so far as not otherwise provided for, are to be paid out of the county fund.

In connection with the expenses of a county council, see also the paragraphs marked (*a*) to (*d*) in this sub-section, sec. 13 (2), and Sch. II. (7) to the Act.

The expenses of the council in the *case of a borough, whether a county borough or non-county borough*, are to be paid out of the borough fund or rate. Where no borough rate is levied they are to be defrayed out of a separate rate to be made, assessed, and levied in like manner as the borough rate. This is subject to the provision in sub-sec. 4, to meet cases where under local acts the expenses incurred for the purposes of the Elementary Education Acts, 1870 to 1900, have been payable out of some fund or rate other than the borough fund or rate.

As to the limit of the amount which may be raised for the purposes of higher education by the council of a non-county borough, see sec. 3.

The expenses of the council in *the case of an urban district other than a borough* are to be defrayed in the manner provided by sec. 33 of the Elementary Education Act, 1876, that is, out of a fund to be raised out of the poor rate of the parish or parishes comprised in the district of the authority according to the assessable value of each parish; and the urban district council for the purpose of obtaining payment of such expenses have the same power as a board of guardians have for obtaining contributions to their common fund under the Acts relating to the relief of the poor. As regards the issue of contribution orders and the enforcement of payment, see notes on the section referred to, p. 98.

With regard to the audit of the accounts under the Act of the councils of counties and of urban districts and of the separate accounts of county boroughs and non-county boroughs under the Act, see sub-secs. 3 and 5 of this section and notes thereon.

See also the provision in note on sub-sec. 3, p. 190, as to the power conferred on the Minister of Health of sanctioning expenses, such sanction having the effect of precluding a disallowance of those expenses by the auditor.

(2.) The county council are to give reasonable notice to the overseers of their proposal to charge expenses in accordance with this sub-section, and the overseers may submit to the council any representations they may think fit on the subject, but they have no appeal against the decision of the council.

(3.) This provision is for the purpose of preventing a non-county borough or urban district of which the council are the Local Education Authority for the purposes of Part III. of the Act being rated by the council of the county, as well as by the council of the borough or district, for like purposes.

(4.) The decision of the county council as to what portion of the expenses referred to, being not more than three fourths shall be charged to the parish or parishes which in the opinion of the council are served

by the public elementary school, is final and not subject to any appeal.

As to expenses incurred by a county council to meet liabilities on account of loans or rent of any school board transferred to them see paragraph (*d*) of the sub-section.

As to what is "capital expenditure," reference may be made to the case of *R.* v. *Wraith, Ex parte* the Kent County Council (1907), 2 K. B. 756; 5 L. G. R. 1091. The Kent County Council provided a new hot water apparatus for heating the N. county school and new earth closets for the R. county school. These things were not in the nature of repairs or renewals. The council paid the cost out of the county rate and charged three-fourths on the respective parishes as being capital expenditure within sec. 18 (1) (*c*). The district auditor objected to these charges on the ground that the expenses were not in respect of capital expenditure as the sums were paid by the council out of funds provided by rates made by them for the purposes of elementary education, and not raised by loans: The court reversed the auditor's decision, holding that the words "capital expenditure" in clause (*c*) of sec. 18 meant the expenditure, irrespective of the source from which it was obtained, which, on its being laid out, becomes in itself capital.

(5.) In this case the decision of the county council as to the portion, being not more than three-fourths, of the expenses referred to is final and not subject to any appeal.

(6.) The sums specially applicable for purposes for which provision is to be made by the managers of a school not provided by the Local Education Authority would include subscriptions, donations, and the sums payable to the managers in respect of the teacher's residence when it forms part of the school premises. There will also be cases where part of the income of an endowment of a school will be available for the purposes referred to, when the whole income is not applicable for those purposes of a public elementary school for which provision is to be made by the Local Education Authority. See sec. 13.

Accounts and Audit.

(7.) The separate accounts which are required to be kept by the council of a borough of their receipts and expenditure under this Act will be the accounts of the council of a county borough as the Local Education Authority under sec. 1, and the accounts of a non-county borough in respect of higher education under sec. 3, and in respect of elementary education when the council are a Local Education Authority under Part III. of the Act.

The accounts referred to are to be separate from the other accounts of the council of the borough, because, except in a few boroughs, it is only the accounts of the council under this Act which will be subject to audit by the district auditor appointed by the Local Government Board,* this audit of the separate accounts being substituted for the audit under the Municipal Corporations Act, 1882. All accounts of county councils and urban district councils are now audited by auditors so appointed.

The separate accounts which by the section are required to be kept are to be made up in like manner as the accounts of a county council.

As to the period for which the separate accounts are to be made up, the accounts of receipts and expenditure of a county council are required by secs. 71 and 73 of the Local Government Act, 1888, to be made up to the end of each local financial year, *i.e.* for the twelve months ending the 31st day of March, and the separate accounts of the borough councils must be made up accordingly.

* Now the Minister of Health.

The accounts of a county council must also be in the form for the time being prescribed by the Local Government Board (see sec. 71 of Local Government Act, 1888), and this provision also applies to the separate accounts of the borough council. On the 30th March, 1918, the Local Government Board issued **the Education Accounts (Annual Statements Order, 1918,** directed to the Council of every Administrative County in England and Wales every County borough and borough and every urban district and the Council of the Isles of Scilly. The order is as follows :—

WHEREAS by Section 5 of the District Auditors Act, 1879, it is provided that where any accounts of the receipts and expenditure of a Local Authority are subject by law to be audited by a district auditor, We, the Local Government Board may from time to time by Order make, and when made revoke and vary, such regulations as seem to Us necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the Local Authority and their officers, and by the said Section further provision is made in relation thereto :

NOW THEREFORE, in pursuance of the powers given to Us by Section 5 of the District Auditors Act, 1879, and of the other Statutes in that behalf, We hereby Order and Prescribe as follows :—

ARTICLE I.—(1.) The provisions of this Article shall apply and have effect in relation to the Accounts of receipts and expenditure under the Education Act, 1902, kept by the Council of every Administrative County, by the Council of every County Borough and other Municipal Borough, by every Urban District Council not being the Council of a Municipal Borough, and by the Council of the Isles of Scilly.

(2.) Subject to any departure to which We may hereafter assent, or to any direction which We may hereafter give, each of the Councils mentioned in sub-division (1) of this Article shall prepare and submit to the District Auditor, at the audit for the year ending on the 31st day of March, 1918, and for each suceeding year, a Statement, in triplicate, in the Form hereinafter prescribed, in relation to the Accounts kept by the Council of their receipts and expenditure under the Education Act, 1902.

(3.) Where the Council are the Local Education Authority for the purposes of the Education Act, 1902, or for the purpose of Part III. of the Act, the Statement shall be in the Form set forth in the Schedule to this Order, and shall contain the particulars specified or referred to in the said Form, so far as they are applicable.

(4.) Where the Council are not the Local Education Authority for the purposes of the Education Act, 1902, or for the purpose of Part III. of the Act, and in any year spend money for the purpose of supplying or aiding the supply of education other than elementary, the Statement shall, with the necessary modifications, be in the Form set forth in the Schedule to this Order, and shall contain the particulars specified or referred to in the said Form as so modified, so far as they are applicable.

(5.) The Certificate of the District Auditor to be appended to each of the triplicate Statements shall be in the Form set forth at the foot of the Statement ; and one of the triplicate Statements shall, after it has been duly certified by the District Auditor, be forwarded by him to the Board of Education, and another of the said triplicate Statements, certified as aforesaid, shall be forwarded by him to Us.

ARTICLE II.—This Order may be cited as "the Education Accounts (Annual Statements) Order, 1918."

[The statement in the Schedule sets forth in detail the various items of account to be provided for the Audit. The Schedule is not printed in this volume. A copy of the order (including the Schedule) can be obtained on application to Messrs. Knight & Co., Ltd., 227 Tooley St., London, S.E.]

The separate accounts are to be audited in like manner and subject to the same provisions as the accounts of a county council.

The Local Government Act, 1888, by sec. 71 (3) provides as follows:—

The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under secs. 247 and 250 of the Public Health Act, 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. Provided that the First Schedule to the District Auditors Act, 1879, shall be modified in manner described in the Second Schedule to this Act.

The provisions of secs. 247 and 250 of the Public Health Act, 1875, which now apply to the audit of the accounts of urban district councils other than boroughs and their officers, and which by the above mentioned section of the Local Government Act, 1888, are, with the necessary modifications, made applicable to the audit of the accounts of county councils and the officers of the council, will also apply to the audit of the separate accounts of a borough council, which by this section are required to be kept.

The Provisions of secs. 247 and 250 of the Public Health Act, 1875, are as follows:—

Sec. 247. Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed, (namely)—

(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the [31st day] of March, by the auditor of accounts [appointed by the Local Government Board].* . . .

(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever;

(4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make

* The powers of the Local Government Board have passed to the Minister of Health.

up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds :

(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts and other documents and papers which he may deem necessary and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same ; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings ; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury :

(6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor ; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances :

(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

(8.) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor ; and the said court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors ; or in lieu of such application any person so agrieved may appeal to the Local Government Board,* which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said Poor Law auditors :

(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision ; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the

* Now the Minister of Health.

audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person :

(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district. . . .

Sec. 250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents and consequences as in the case of such last-mentioned accounts.

Appeal against the Auditors' Decision.

It will be observed that under sub-sec. 8 of sec. 247 of the Public Health Act, 1875, a person aggrieved by a disallowance may apply to the High Court for a writ of *certiorari* to remove the disallowance into that Court in the same manner, and subject to the same conditions, as are provided in the case of disallowances by auditors under the Poor Law Acts, that the Court shall have the same power with respect to allowances, disallowances, and surcharges under that Act as it has with respect to disallowances or allowances by the Poor Law auditors or in lieu of such application any person so aggrieved may appeal to the Local Government Board*, who shall have the same powers in the case of the appeal as they possess in the case of allowances, disallowances and surcharges by Poor Law auditors.

With regard to an appeal against the decision of an auditor under the Poor Law Acts, sec. 35 of the Poor Law Amendment Act, 1844, provides that it shall be lawful for every person aggrieved by any allowance, and for every person aggrieved by any disallowance or surcharge if such last-mentioned person have first paid or delivered over to any person authorised to receive the same all such money, goods, and chattels as are admitted by his accounts to be due from him or remaining in his hands, to apply to the [High Court of Justice] for a writ of *certiorari* to remove into the Court the allowance, disallowance, or surcharge. On the removal of the allowance, disallowance, or surcharge, the Court shall decide the particular matter of complaint set forth in such statement (*i.e.* the statement of the matter complained of which the statute requires shall be set forth in the notice of the intended application to be given to the auditor) and no other ; and if it appear to the Court that the decision of the auditor was *erroneous*, they shall, by rule of the Court, order such sum of money as may have been improperly allowed, disallowed, or surcharged, to be paid to the party entitled thereto by the party who ought to repay or discharge the same ; and they may also, if they see fit, by rule of the Court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such Court may seem fit.

By the same statute it is provided (by sec. 36) that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the [High Court of Justice] for a writ of *certiorari*, to apply to the Poor Law Commissioners* to inquire into and decide upon the *lawfulness* of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue

* Now the Minister of Health.

such order therein as they may deem requisite for determining the question. By a subsequent statute (11 & 12 Vict., c. 91, sec. 4) it is enacted that where any appeal shall be made to the said commissioners against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same *according to the merits of the case;* and if they shall find that any disallowance or surcharge shall have been, or shall be, lawfully made, but that the subject-matter thereof was incurred *under such circumstances as make it fair and equitable* that the disallowance or surcharge should be remitted, they may direct that the same shall be remitted upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

As the Minister of Health (in whom the powers of the Poor Law Commissioners are now vested) is by the statutes referred to empowered not only to decide upon the lawfulness of the decision of the auditor, but to exercise an equitable jurisdiction, the cases of appeals to the High Court of Justice under sec. 35 of the Poor Law Admendment Act, 1844, are very exceptional. In appealing to the Minister, the appellants must forward to him a copy of the auditor's reasons for making the allowance, disallowance, or surcharge (which, it will be observed, he can be called upon to state in the book of accounts), together with a copy of his certificate of the disallowance or surcharge. They should also carefully and fully set forth in their appeal the facts and reasons which they may have to submit in support of it. Full instructions will be given to an appellant on his writing to the Ministry of Health.

The Local Government Board held that the cost of the preparation of an appeal to them against an auditor's surcharge cannot lawfully be charged upon the funds of the local authority.

If persons who have been surcharged by the auditor fail to avail themselves of their remedy by appeal either to the High Court of Justice or the Minister of Health, they cannot afterwards, when summoned before a magistrate for the recovery of the amount, set up any objection to the surcharge. If the magistrate in such case refuse to act, the High Court of Justice will compel him to do so. (*R.* v. *Finnis*, 28 L. J. M. C. 201 ; 5 Jur., N. S., 971.)

It is, however, to be observed that by the Local Authorities (Expenses) Act, 1887, it is provided that "expenses paid by any local authority" —that term including local authorities under this Act—"whose accounts are subject to audit by a district auditor, shall not be disallowed by that auditor, if they have been sanctioned by the Local Government Board." This enactment enables the Minister of Health by his sanction to relieve the members who have authorised expenditure, which through some informality in the proceedings or on other technical grounds may be illegal, from liability to a surcharge. It is the practice to decline to sanction under this enactment prospective or recurring expenditure.

In this connection reference may also be made to sec. 5 of the Education (Administrative Provisions) Act, 1907, which provides as follows:

So also, under sec. 5 of the Education (Administrative Provisions) Act, 1907, if the Minister of Health by order declare that expenses incurred for particular purposes specified in the order may or may not be properly treated under sec. 18 of the Education Act, 1902, as capital expenses, no question shall be raised on audit as to the treatment of expenses incurred for those particular purposes if they are treated in accordance with the order.

Sec. 247, sub-sec. 9, of the Public Health Act, 1875, also provides that the auditors shall recover the sums certified to be due by the

like process and with the like powers as in case of sums certified on the audit of the poor rate accounts.

Under the Poor Law Acts the payment of any sum certified to be due by a district auditor may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate (Summary Jurisdiction Act, 1884, sec. 11). See also 11 & 12 Vict., c. 91, sec. 9, as to proof required in proceedings. No proceedings to recover sums certified are to be commenced after the lapse of nine calendar months from the disallowance or surcharge by the auditor, or in the event of an application by way of appeal against the auditor's decision to the High Court of Justice, or to the Local Government Board,* after the lapse of nine calendar months from the determination thereon (12 & 13 Vict., c. 103, sec. 9). As to the proceedings for recovery of poor rate by warrant of distress and imprisonment in default of distress, see 43 Eliz., c. 2, sec. 2; 17 Geo. 2, c. 38, secs. 7-10; 54 Geo. 3, c. 170, sec. 12; 12 & 13 Vict., c. 14; 39 & 40 Vict., c. 61, sec. 31; and 47 and 48 Vict., c. 43.

Payment for Audit.

As regards the payment to be made for the audit of accounts by auditors appointed by the Local Government Board, the District Auditor's Act, 1879, provides that, for the purpose of contributing to the amount required for the payment of the salaries or remuneration and of the expenses of the auditors, there shall be charged on every local authority whose accounts are audited by an auditor so appointed a stamp duty, according to the scale contained in the First Schedule to the Act, and that the duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned (sec. 2).

Where the accounts of the receipts and expenditure of a local authority are so audited, the local authority are to prepare and submit to the auditor at every audit a financial statement in duplicate in the form and containing the particulars prescribed by the Local Government Board*; one of such duplicates is to have the stamp charged under the Act affixed thereon, and the auditor at the conclusion of the audit is to cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement. He is forthwith to send the duplicate so stamped and certified by him to the Local Government Board* (sec. 3).

The duties charged under the Act are to be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, apply accordingly; and such duties may, if the Commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by the Act (sec. 6).

If a local authority fail to comply with the provisions of the Act with respect to a financial statement, the local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer is liable to a fine not exceeding £20 for each offence (sec. 7).

The rate of stamp duties specified in the First Schedule to the Act, as amended by the Local Government Act, 1888, which apply to the separate accounts of boroughs and the accounts of county councils, are as follow:—

* Now the Minister of Health.

Where the total of the expenditure comprised in the financial statement is under £20. the sum shall be 5s.

£20	and under	£50	,,	,,	,, 10s.
£50	and under	£100	,,	,,	,, £1
£100	and under	£500	,,	,,	,, £2
£500	and under	£1,000	,,	,,	,, £3
£1,000	and under	£2,500	,,	,,	,, £4
£2,500	and under	£5,000	,,	,,	,, £5
£5,000	and under	£10,000	,,	,,	,, £10
£10,000	and under	£20,000	,,	,,	,, £15
£20,000	and under	£50,000	,,	,,	,, £20
£50,000	and under	£100,000	,,	,,	,, £30
£100,000	and under	£150,000	,,	,,	,, £50
£150,000	and under	£200,000	,,	,,	,, £60

£200,000 and upwards the sum shall be £15 in addition for every £50,000 or part thereof.

In the case of urban district councils the maximum stamp duty is £50.

(8.) For provision as to the fund or rate out of which the expenses under this Act are to be paid in the case of a borough, except in the cases provided for by this sub-section, see sub-sec. (1) of this section. Nottingham and Oxford are boroughs to which this sub-section refers.

(9.) Where the education committee or the managers of any public elementary school are entrusted by the Local Education Authority with the receipt or payment of moneys under the Act, the accounts of those receipts and payments will be the accounts of the Local Education Authority, and will therefore be dealt with as such by the auditor, whether the Local Education Authority are the council of a county, of a borough, or of an urban district.

In the case of managers of a public elementary school, the auditor will have the same powers with respect to their accounts when they are entrusted with the receipt or payment of moneys under the Act, and they will be subject to the same liabilities as if they were officers of the council.

Borrowing.

19.—(1.) A council may borrow for the purposes of the Elementary Education Acts, 1870 to 1900, or this Act, in the case of a county council* as for the purposes of the Local Government Act, 1888, and in the case of the council of a county borough, borough, or urban district as for the purposes of the Public Health Acts, but the money borrowed by a county borough, borough, or urban district council shall be borrowed on the security of the fund or rate out of which the expenses of the council under this Act are payable. (1)

(2.) Money borrowed under this Act shall not be reckoned as part of the total debt of a county for the purposes of section sixty-nine of the Local Government Act, 1888, or as part of the debt of a county borough, borough, or urban district for the purpose of the limitation on borrowing under subsections two and three of section two hundred and thirty-four of the Public Health Act, 1875. (2)

* The words "a County Council" are to be construed as if they were "The London County Council" in the application of sec. 19 to London. (Education (London) Act, 1903, Sch. I (5)).

Additional Statutory Powers.

Sec. 3 of the Education (Administrative Provisions) Act, 1907 :—

In the application of sec. 69 of the Local Government Act, 1888, to money borrowed after the passing of this Act (*i.e.* 28th August, 1907), under the Education Acts by the council of a county, a period not exceeding sixty years shall be substituted for a period not exceeding thirty years as the maximum period within which borrowed money is to be repaid, and any money reborrowed for the purpose of discharging a loan raised for the purposes of the Education Acts may, if the Local Government Board approve, and subject to such conditions as they impose, be repaid within such period, not exceeding sixty years from the date of the original loan, as the Local Government Board fix.

Sec. 8 of the Education (Administrative Provisions) Act, 1907 :—

"The Public Works Loan Commissioners may lend to a Local Education Authority any money which that authority are authorised to borrow for the purposes of Part II. of the Education Act, 1902."

Sec. 6 (5) of the Education Act, 1918, enacts as follows :—

"Where any arrangement under this section provides for the payment of an annual contribution by one Council to another, the contribution shall, for the purposes of sec. 19 of the Education Act, 1902, form part of the security on which money can be borrowed under that section."

Sec. 37 of the Education Act, 1918 :—

"Any expenses incurred by a council in connection with any Provisional order for the purposes of the Education Acts, or any order under this Act (*i.e.*, the Act of 1918) for the purpose of the acquisition of land, shall be defrayed as expenses of the council under the Education Act, 1902, and the council shall have the same power of borrowing for the purpose of those expenses as they have under sec. 19 of the Education Act, 1902, for the purpose of the expenses therein mentioned."

Sec. 49 of the Education Act, 1918, in providing compensation to existing officers, enacts that "if any compensation is payable otherwise than by way of an annual sum, the payment of that compensation shall be a purpose for which a council may borrow for the purposes of the Education Acts."

Note 19.—(1.) The provisions which govern the borrowing by county councils for the purposes of the Local Government Act, 1888, are contained in sec. 69 of that Act. The provisions which apply in the case of borrowings by the council of a county borough, borough, or urban district for the purposes of the Public Health Acts are contained in secs. 233-241 of the Public Health Act, 1875. These provisons, so far as they have any bearing on the raising of loans by councils for the purposes of the Education Acts, are set out in the Appendix, with notes on the sections (see pp. 553-561).

With regard generally to borrowing by the councils of counties, county boroughs, boroughs, and urban districts for the purposes of the Education Acts, 1870 to 1918, it is to be borne in mind that a council are not empowered to borrow money for the purpose of meeting their current expenses, and that they have no authority to borrow for any purposes except those for which powers of borrowing are conferred by statute, and in accordance with the statutory provisions applicable. If in any case sums are charged in the accounts of a council for interest on moneys borrowed otherwise than in accordance with such statutory provisions, it will devolve on the auditor to disallow the charges, and to surcharge the same on the persons making

or authorising the making of the illegal payment. The persons surcharged will, subject to appeal, be personally liable for the amount of the surcharge made by the auditor. See *R.* v. *Sir Charles Reed*, in Court of Appeal, reversing the decision of the Queen's Bench Division (L. R. 5 Q. B. D. 485; 49 L. J. (N. S.) Q. B. 600; 42 L. T. (N.S.) 855; 28 W. R. 787). The case *In re Sheffield Permanent Building Society, Ex parte Watson* (21 Q. B. D. 301; 57 L. J. Q. B. 609; 59 L. T. (N. S.) 401; 36 W. R. 829), may also be referred to. In this case the directors of an unincorporated building society which had no borrowing powers borrowed money for the benefit of the society, and gave to the lender as security the promissory notes of the directors. The society was afterwards incorporated under the Building Scoieties Act, 1874, and acquired borrowing powers. The appellant, who was the representative of the lender, applied to the society for repayment of the loan, but ultimately agreed to refrain from legal proceedings against the society on the directors giving him a deposit note for the amount due. The directors accordingly gave him a deposit note under the seal of the society, stating that the money was lent by the appellant on the date of the deposit note, and he thereupon gave up to them the promissory notes above-mentioned. It was held that the deposit note was not binding on the society.

Sanction of the [Local Government Board].

Any loans for the purposes of the Acts (except loans in connection with industrial schools), are subject to the sanction of the Minister of Health. In the case of loans of county councils the Minister is required by sec. 69 (1) of the Local Government Act, 1888 (see Appendix, p. 553), to take into consideration before giving his consent any representation made by any ratepayer or owner of property rated to the county rate. It is, however, the general practice of the department, before sanctioning a loan, to cause a local inquiry, after public notice, to be held by an inspector, and at the inquiry any person interested may appear and be heard. Under sec. 23 (9), *post*, of this Act the provisions of sec. 87 (1) and (5) of the Local Government Act, 1888, will apply to any such inquiry in connection with loans under this Act (see notes on section referred to).

Application should be made to the Ministry for sanction to the loan before the expenditure is incurred, although the Minister is not precluded from sanctioning loans in respect of works which have been carried out. It is, however, the invariable practice of the department to refuse to sanction a loan to cover expenditure which has been included in closed and audited accounts.

Under sec. 17 (2) of the Education Act, 1902, all matters relating to the exercise by a Local Education Authority of their powers under the Act, except the power of raising a rate or borrowing money, shall stand referred to the education committee constituted by the authority, and the Local Education Authority, before exercising any such powers, shall, unless in their opinion the matter is urgent, receive and consider the report of the education committee with respect to the matter in question. The Local Education Authority may also delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers under the Act, except the power of raising a rate or borrowing money. The Local Government Board have stated that having regard to the provisions above referred to, they consider that all correspondence relating to the borrowing of money by Local Education Authorities under the Act should be conducted by the clerk of the council, and not by the secretary of the education committee.—*Local Government Chronicle*, 16th May, 1908.

The precise purposes of the Education Acts for which a council may borrow are not specified in the Acts. School boards were authorised by sec. 10 of the Education Act, 1873, to borrow for any expense incurred or required to be incurred by them "in providing or enlarging a schoolhouse; or in paying off any debt charged on a schoolhouse provided by them, or on any land acquired by them by gift, transfer, purchase or otherwise for the purposes of this Act; or in any works of improving or fitting up a schoolhouse which, in the opinion of the Education Department, ought by reason of the permanent character of such works to be spread over a term of years." These provisions are, however, repealed by sec. 25 of the Act of 1902.

The Local Government Board have informed a Local Education Authority that they would be willing to sanction a loan for the provision of portable school buildings on the Doecker principle and to allow fifteen years for repayment. Fifty years would be allowed in the case of substantial brick or stone buildings.

In sanctioning loans to county councils under the Act the Minister of Health, it may be assumed, will be guided by the provision in sec. 69 (1) (*c*) the Local Government Act, 1888 (Appendix, p. 553), which empowers a county council to borrow "for any permanent work or other thing which the county council are authorised to do, and the cost of which ought, in the opinion of the Minister, to be spread over a term of years."

Sec. 234 (1) of the Public Health Act, 1875 (see Appendix, p. 557), applies to borrowings by the councils of county boroughs, boroughs, and urban districts. Councils under that Act are empowered to borrow for permanent works, including any works of which the cost ought, in the opinion of the Minister of Health, to be spread over a term of years.

It was the practice of the Board of Education in sanctioning loans to school boards to include in the sanction expenditure for such purposes as desks, tables, chairs, and all fixed fittings of the school, but not expenditure for books, blackboards, easels, and ordinary school apparatus.

In the case of any application by a Local Education Authority for sanction to a loan for the provision of a new public elementary school, or for the enlargement of such a school when the enlargement is such as in the opinion of the Board of Education amounts to the provision of a new school, the provisions of secs. 8 and 9 of the Act (see pp. 157-8) are to be borne in mind. Before sanctioning any loan for the purpose, the Minister of Health will, no doubt, require to be satisfied that the conditions laid down in sec. 8 have been duly complied with, and that, if there has been an appeal under the section, the Board of Education have determined that the proposed new school or enlargement of a school is necessary, or that the enlargement does not amount to the provision of a new school.

The sanction of the Minister of Health is also necessary to the periods for any loans under the Act. The maximum terms which can be sanctioned by him are, in the case of county councils, sixty years, as modified by sec. 3 of the Education (Administrative Provisions) Act, 1907, (sec. 69 (5) of the Local Government Act, 1888, see Appendix, p. 554), and in the case of the councils of county boroughs, boroughs, and urban districts, sixty years (sec. 234 (4) of the Public Health Act, 1875, see Appendix, p. 557); but the period to be sanctioned within these maximum terms is within the discretion of the Minister. The general principles by which the Board were guided in determining the periods for loans sanctioned by them were stated by Mr. (now Sir N. T.) Kershaw, an assistant secretary of the Board, in his evidence before the Select Committee of the House of Commons, which was appointed in 1902, to inquire into the subject of the repayment of

loans by local authorities (Parliamentary Paper, No. 239, Session 1902). One of the first principles the Board had in view was that the maximum term of sixty years should be granted only in respect of land purchase, on the ground that Parliament in fixing a maximum period had regard to the most durable item. They were further guided by "two main principles—the first, that the period of the loan should not exceed the period during which the works were likely to endure and be of use for the purpose which they were designed to serve; the second, that the ratepayers of the future should not be unduly burdened with past debt, and so rendered less able to discharge efficiently the larger duties that are likely to come upon them in the future."

Advances by the Public Works Loan Commissioners.

The Public Works Loan Commissioners are authorised by sec. 9 of the Public Works Loans Act, 1875, to make loans for the purpose of "any schoolhouse or work for which a school board is authorised to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same," and by paragraph (10) of the Third Schedule to the present Act, "Local Education Authority" is substituted for "school board" in this enactment. The commissioners are further empowered by the Public Works Loans Act, 1896, to lend money for "any work for which the council of a county, borough, district . . . are authorised to borrow." They can, therefore, make advances for the purpose of any loans which the councils, of counties, county boroughs, boroughs, or urban districts are authorised to raise for the purposes of the Education Acts. Such advances will be subject to sec. 11 of the Public Works Loans Act, 1875, which, as amended by the Public Works Loans Acts, 1898 and 1911, provides as follows:—

"Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan not exceeding the period authorised by a special Act relating to such loan, or if no period be so authorised not exceeding *fifty* years.

"Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

"Where no period is authorised by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may, either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners.

"The Loan Commissioners, in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period shall be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

"The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan."

The Public Works Loans Act, 1896, which confers the power on the Commissioners to lend to councils, does not authorise any period for which the loans may be advanced by the commissioners. The commissioners, it would appear, are not therefore able to make such

advances for a longer period than fifty years, unless the period is extended by the Treasury under the section quoted, notwithstanding that the council may be authorised to borrow for a longer term. Sec. 10 of the Education Act, 1873, which empowered the commissioners, on the recommendation of the Board of Education, to lend money to school boards for such period, not exceeding fifty years, as might be recommended by that Board, is repealed by sec. 25 of the present Act, as also is the similar provision in sec. 5 (4) of the 56 & 57 Vict., c. 42, which applied to loans for schools for blind and deaf children and the provision in sec. 6 of the 62 & 63 Vict., c. 32, with reference to loans for schools for defective and epileptic children.

In reply to an inquiry addressed to them on the subject, the Local Government Board have stated that no recommendation by them is necessary to enable the Public Works Loan Commissioners to advance loans for educational purpose. (*Local Government Chronicle, 6th* January, 1912.)

Repayment of Loans: Interest: Fees.

The commissioners make it a rule, in the absence of special circumstances, to require moneys advanced by them to be repaid by equal annual instalments of principal in each year where the period for repayment exceeds thirty years, while they allow the repayment to be made by equal annual instalments of principal and interest combined, in cases where the borrower will consent to repay the loan in thirty years, although a longer period may be authorised for the repayment.

With regard to the rates of interest on loans advanced by the commissioners, the Public Works Loans Act, 1897, by sec. 1, provides that the rates of interest at which loans may be made out of the Local Loans Fund, on the security of local rates, may be fixed by the Treasury from time to time, having regard to the duration of the loans, and shall be such rates, not less than 2¾ per cent. per annum, as in the opinion of the Treasury are sufficient to enable such loans to be made without loss of the Local Loans Fund.

Sec. 1 of the Public Works Loans Act, 1897, has been modified by sec. 4 of the Public Works Loans Act, 1917, and sec. 4 of the Public Works Loans Act, 1918, as respects loans made out of the local loans fund otherwise than on the security of the local rates, but the power to fix the rate of interest is in all cases reserved to the Treasury.

The Treasury, by a minute, of 21st November, 1919, have directed that on loans granted out of the local loans fund on the security of local rates there shall be chargeable the following rates of interest, viz. :—

Loans if repayable in not exceeding thirty years, 6 per cent. per annum;

Loans if repayable in not exceeding fifty years, 6¼ per cent. per annum.

The fees payable to the commissioners by borrowers are fixed by regulations made by the commissioners, with the approval of the Treasury, under sec. 41 of the Public Works Loans Act, 1875. The regulation now in force for this purpose came into operation on the 1st September, 1907, and is as follows :—

"1. The fees or sums to be paid by the applicants pursuant to sec. 41 of the Public Works Loans Act, 1875, in respect of loans on rates, shall not exceed the following sums, viz :—

For the 1st £1000, 20/- for every £100 of such loan.

For the 2nd £1000, 15/- per £100: For the 3rd and 4th 10/- per £100; for the 5th to the 10th 5/- per £100; and for each subsequent £1000 up to £100,000 2/6 per £100 of such loan. Loans exceeding £100,000 to be charged as £100,000.

"Where a loan is advanced by instalments secured by one deed,

there shall be paid in respect of each advance after the first, an additional fee of £1 if the advance does not exceed £100, and an additional fee of £2 if it does exceed £100.

"For the purpose of this regulation, the total amount to be advanced under one security deed shall be considered as a loan, and fractional parts of £100 shall be considered as £100.

"In addition to the above fees, the applicants shall pay the stamp duty, counsel's fees, and other disbursements incurred by the Loan Commissioners in respect of the several applications.

"In respect of all business, not being a loan on rates, the fees or sums payable shall be fixed by the commissioners, regard being had to each particular case."

The Public Works Loans Act, 1875 (38 & 39 Vict., c. 89), by sec. 29, empowers the Public Works Loan Commissioners, if they think fit, at any time to accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage before the time when the same is due. It was the practice of the commissioners to accept repayment of loans without question at any time; but in November, 1895, the Treasury deemed it necessary to lay down the following rules, subject to which applications for repaying loans in advance should in future be complied with:—

(1.) That the applicants serve the Lending Department with three months' notice;

(2.) That they agree to repay at such times and in such instalments as may be required by the Lending Department, after communication with the Commissioners for the Reduction of the National Debt, who are charged with the administration of the Local Loans Fund; and

(3.) That for every £100 outstanding on the loan account they repay such sum as may be certified to be the equivalent of the price at which £100 of Local Loans Stock can be purchased.

The Public Works Loans Act, 1875, by sec. 36, provides that where "the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board* to satisfy themselves that the loan is applied to such purpose; and they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied." The Board's successor is accordingly empowered to appoint officers to conduct such examination on their behalf, and the officers appointed will have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of the examination, as an inspector of the Local Government Board had under the Acts relating to the relief of the poor. This section, it will be observed, applies to all loans granted on the security of a rate, and consequently applies to loans by the commissioners for the purposes of the Education Acts.

Unexpended Balances.

The Public Works Loans Act, 1878, contains the following further provision:—Where upon examination, made in pursuance of sec. 36 of the Public Works Loans Act, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the security of a rate, it appears to the Local Government Board* that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board* may order that sum to be, within the time named in the order, applied either for the said purpose, or towards the repayment of the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways

* Now the Minister of Health.

and partly in the other; and further, if it appears to them that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct that a sum equal to the amount so misapplied be raised within the time and out of the fund or rate named in the order, and be applied as directed by the order. An order made by the Local Government Board or its successor in pursuance of this section may be enforced by writ of *mandamus*.

By the Public Works Loans Act, 1881, sec. 8, the Local Government Board* are empowered to make orders as to the expenses incurred by them, or by any officer appointed by them, in making any examination in pursuance of sec. 36 of the Public Works Loans Act, 1875, and any such order may contain directions as to the parties by whom, and the rates out of which, such expenses shall be borne, and may, on the application of the Board,* be made a rule of the High Court of Justice.

With the view of giving additional security in the case of loans by the Loan Commissioners, it is provided by sec. 19 of the Public Works Loans Act, 1875, that where a loan has been granted on the security of a mortgage of any rate to any borrower who appeared to the commissioners to have power to levy and mortgage the rate, and has been expended upon the work in respect of which or in or for the benefit of the locality in which the rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced, notwithstanding any defects in the power or title of the borrower by whom the mortgage purports to be granted; and the commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging the rate, have the same power of making and levying and enforcing the making or levying the rate for the purpose of repaying the loan and interest, and all sums due under the mortgage, as if the borrower had been duly constituted, and was not dissolved, and had full power to make, levy, and mortgage the rate.

The Public Works Loans Act, 1881, by sec. 9, enacts that the unapplied balance of any loan advanced by the commissioners, either before or after the passing of that Act, on the security of a rate, may, with the consent of the commissioners and of the central authority or department, if any, with whose sanction and consent such loan was authorised to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are applicable; and that in construing sec. 36 of the Public Works Loans Act, 1875, and sec. 4 of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance is so applied is to be deemed to be the purpose for which that portion of the loan was advanced. The advantage of this provision is obvious in cases where the works for which a loan was advanced by the Loan Commissioners are carried out at a less cost than the whole amount of the loan, or where, after obtaining the loan, it is found desirable to abandon a part of the works, and other works are required of such a character that the commissioners and the sanctioning authority will assent to their being paid for out of the unapplied balance. Before this power was given, the authority would, in such a case, be required to repay the unapplied balance to the commissioners, even though it might be necessary to reborrow it from them immediately for other works.

Separate Accounts of Advances.

The Public Works Loans Act, 1882 (45 & 46 Vict., c. 62, sec. 8), provides that "where, after the passing of this Act (*i.e.*, after the 18th of August, 1882), any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public

* Now the Minister of Health.

Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Minister of Health, and shall cause all the advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made."

Borrowing for Industrial and special Schools.

With respect to the powers of a Local Education Authority to borrow for purposes connected with industrial schools, see sec. 74 of the Children Act, 1908, p. 301; for schools for blind and deaf children, see 56 & 57 Vict., c. 42, sec. 5; for schools for defective and epileptic children, 62 & 63 Vict., c. 32, sec. 6. In the case of loans in respect of industrial schools, the consent of the Secretary of State, and not that of the Minister of Health is to be obtained.

(2.) For the provisions referred to in this sub-section, see Appendix, pp. 553 and 557. Any loans transferred to a council under this Act are to be treated, for the purpose of the limitation on borrowing powers imposed by these provisions, as money borrowed under this Act (Sch. II. (3), *post*), and are not therefore to be reckoned as part of the debt of the council for the purpose of the provisions in question.

Arrangements between Councils.

20. An authority having powers under this Act—

(*a*) May make arrangements with the council of any county borough, district, or parish, whether a Local Education Authority or not, for the exercise by the council, on such terms and subject to such conditions as may be agreed on, of any powers of the authority in respect of the management of any school or college within the area of the council; (1) and

(*b*) If the authority is the council of a non-county borough or urban district may, at any time after the passing of this Act, by agreement with the council of the county, and with the approval of the Board of Education, relinquish in favour of the council of the county any of their powers and duties under this Act, and in that case the powers and duties of the authority so relinquished shall cease, and the area of the authority, if the powers and duties relinquished include powers as to elementary education, shall, as respects those powers, be part of the area of the county council. (2)

Note 20.—(1.) The authorities having powers under this Act are the councils of counties and county boroughs who under sec. 1 are Local Education Authorities, the councils of non-county boroughs and urban districts who under that section are Local Education Authorities for the purposes of Part III. of the Act (as to elementary education), and the councils of non-county boroughs and urban districts having powers

under sec. 3 to supply or aid the supply of education other than elementary. In para. (*a*) reference to the council of a borough includes reference to the council of a metropolitan borough.

The Board of Education have pointed out that when the council of a non-county borough or of an urban district relinquish their powers under the second sub-section of this section, it would be possible for the council of the county under this provision to transfer back to the borough or district their powers of management in respect of any school or college within the area of the relinquishing council.

This provision would also appear to allow of the council of a non-county borough or urban district who are a Local Education Authority for the purposes of Part III. of the Act transferring the management of a school provided by them to the council of the county.

Arrangements under this sub-section are subject to such conditions as are agreed on, and may therefore be made for a limited period.

(2.) This sub-section refers to the councils of non-county boroughs and urban districts who under sec. 1 are the Local Education Authority for the purposes of Part III. of the Act (as to elementary education), and the councils of non-county boroughs and urban districts who under sec. 3 are empowered to supply or aid the supply of education other than elementary.

With regard to the relinquishment of powers and duties in these cases, see notes on secs. 3 and 5; see also Sch. II. (2) (8) (16) (17) and (21) (*b*).

The relinquishment will not necessarily apply to all powers and duties of the authority, but the powers relinquished will be relinquished permanently.

The question has arisen whether under the above section a voluntary school situate in a borough, but used almost entirely for the neighbouring county could be transferred by the council of the borough to the council of the County as the Local Education Authority. It is doubtful whether such a transfer could be made; but the powers of sec. 53 of the Education Act, 1918, see p. 403, may apparently be employed for such an arrangement between the school authorities and the managers of the voluntary school with the consent of the Board of Education.

Provisional Orders and Schemes. (1)

21.—(1.) . . . . .

(2.) Any scheme . . . under this Act may contain such incidental or consequential provisions as may appear necessary or expedient.

(3.) A scheme under this Act when approved shall have effect as if enacted in this Act, and any such scheme, . . . may be revoked or altered by a scheme made in like manner and having the same effect as an original scheme. (2)

Note 21.—(1.) Prior to the passing of the Education Act, 1918, the Board of Education could make provisional orders for the compulsory purchase of land under sec. 20 of the Education Act, 1870, and schemes under sec. 17 (7) of the Education Act, 1902, for the establishment of education committees. But the Education Act, 1918, has repealed both those enactments and also sub-sec. (1) of the above section which applied the machinery of the Public Health Act, 1875, for the making of provisional orders. In future those orders of the Board of Education will not generally become provisional and therefore will not require confirmation by Act of Parliament.

(2.) Schemes may be made under sec. 17 of the Education Act, 1902, for establishing education committees and delegating powers to such committees. Before approving any such scheme the Board of Education must observe the procedure laid down in sub-sec. (6) of that section. When the approval of the Board has been given the scheme is to have effect as if enacted in this Act. This provision seems to prevent any question arising as to the scheme being in any respect *ultra vires :*

In *Institute of Patent Agents* v. *Lockwood*, 1894, A. C. 347, provisions somewhat similar to the above were discussed in an appeal to the House of Lords. In that case rules had been made under the Patents, Designs, and Trade Marks Act, 1883, sec. 101, which provided that general rules might be made under that section . . . "and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act." It was argued that certain of the rules which the Board of Trade purported to make under that Act were *ultra vires*, on the ground that the Board of Trade had no express statutory power to impose taxation and that the validity of the rules might be inquired into. All the law Lords held that the rules were *intra vires* but they differed as to the meaning of the provision that the rules should have the same effect as if they were contained in the Act. Lord Herschell, L.C., was of opinion that the provision could only mean that for all purposes of construction or obligation or otherwise the rules must be treated exactly as if they were in the Act (p. 360). Lords Watson and Russell of Killowen took the same view, Lord Russell adding (p. 367), "that if the rules are to be read as part of the Act (as he thought they ought to be) it is not, in this case, competent to judicial tribunals to reject them. Such effect," he said, "must be given to them by judicial construction as can properly be given to them taking them in conjunction with the general provisions of the Act or Acts of Parliament in connection with which they have been formulated." Lord Morris, on the other hand, took the contrary view: "I admit," he said, "that the words are very strong; the general rules are to have the same effect as if they were embodied in the Act; I accede to that. But what general rules? General rules which are made for 'giving effect' to that section; not all general rules—there is no such power in my opinion given to the Board of Trade. What are the general rules which are to have the same effect as if they were contained in the Act? The general rules made under the section—general rules such as the Legislature has under sec. 101, delegated to the Board of Trade the authority of making. But if a Court of Justice . . . considers that certain rules are rules which do not come within this section, in my opinion they would be *ultra vires*, and it would be the duty of the court not to regard them as operative. As regards the question of their receiving any further sanction from the fact of their being laid before both Houses of Parliament, that is a matter of precaution. They do not receive any imprimatur from having been laid before both Houses of Parliament; it is only that an opportunity is given to somebody or other, if he choses to take advantage of it, of moving that they be annulled. It is a precaution which in ninety-nine cases out of a hundred would be practically a sufficient precaution, but . . . I have arrived at the conclusion that if the rules were not such rules as it was contemplated the Board of Trade should have the authority of making under the sections giving them the authority of making rules, it was the duty of the Court to determine that they were *ultra vires*."

Lord Herschell stated, however, that the opinion he expressed on this point was not necessary for the determination of the case (p. 360). The observations of the four Lords on the point may therefore be regarded as dicta, and not judicially binding, but coming from such high authority, the opinion of the majority will probably be followed.

Nevertheless it is submitted that the opinion of Lord Morris is entitled to great weight and that if a case comes before the House of Lords in which rules clearly exceed the scope of the authority given by Parliament to the rule-making body, the House will be free to deal with such rules on the lines laid down by Lord Morris.

A similar question arose in an order made by the Board of Agriculture under the Small Holdings and Allotments Act, 1908, sec. 39 (3) of which provides that an order for the compulsory purchase of land made by a County Council and confirmed by the Board of Agriculture shall become final and have effect as if enacted in that Act. On an application for a rule *nisi* to the County Council to show cause why their order should not be quashed on the ground that in making it they had disregarded the restrictions imposed by sec. 41 (2) of the Act, the King's Bench Division held that they had no power to set aside the order of the Board of Agriculture. (*Ex Parte Ringer* (1909), 7 L. G. R. 1041; 73 J.P. 436.)

As to the effect of a new scheme for governing a school, upon a scheme previously in force, see *Dean of Chester* v. *Bishop of Chester* 87 L. T. 618 (H. L.).

Provisions as to Elementary and Higher Education Powers respectively.

22.—(1.) In this Act and in the Elementary Education Acts the expression "elementary school" shall not include any school carried on as an evening school under the regulations of the Board of Education. (1)

(2.) The power to provide instruction under the Elementary Education Acts, 1870 to 1900, shall, except where those Acts expressly provide to the contrary, be limited to the provision in a public elementary school of instruction given under the regulations of the Board of Education to scholars who, at the close of the school year, will not be more than sixteen years of age: Provided that the Local Education Authority may, with the consent of the Board of Education, extend those limits in the case of any such school if no suitable higher education is available within a reasonable distance of the school. (2)

(3.) The power to supply or aid the supply of education other than elementary includes a power to train teachers, and to supply or aid the supply of any education except where that education is given at a public elementary school. (3)

Additional Statutory Provisions.

Sec. 2 of the Education (Administrative Provisions) Act, 1911, provides as follows:—

"For the purposes of sec. 22 (2) of the Education Act, 1902, the Board of Education may, on the application of the Local Education Authority, by order, substitute, as respects any public elementary school within the area of the authority, the close of the educational year as fixed by the Board for that school for the close of the school year, and, as respects any such school, that sub-section shall have effect as if the close of the educational year fixed by the order were substituted for the close of the school year."

Sec. 8 (5) of the Education Act, 1918, provides as follows:—

"Notwithstanding anything in the Education Acts the Board of Education may, on the application of the Local Education Authority,

authorise the instruction of children in public elementary schools till the end of the school term in which they reach the age of sixteen or (in special circumstances) such later age as appears to the Board desirable." This is followed by a proviso as to the matters to which the Board are requested to have regard in considering such applications (see p. 360), and paragraph 5 in the circular 1118, at p. 632.

Sec. 11 of the Education (Administrative Provisions) Act, 1907, provides as follows :—

"The powers and duties of a Local Education Authority under Part III. of the Education Act, 1902, shall include a power to aid by scholarships or bursaries the instruction in public elementary schools of scholars from the age of twelve up to the limit of age fixed for the provision of instruction in a public elementary school by sec. 22 (2) of that Act."

By sec. 24 of the Education Act, 1918, the powers as to the provision of scholarships conferred by sec. 11 of the Education (Administrative Provisions) Act, 1907, include a power to provide allowances for maintenance."

Note 22.—(1.) It is now clearly laid down that a school carried on as an evening school under the regulations of the Board of Education shall not be included in the expression "elementary school," and consequently after the "appointed day" no such school can be a public elementary school. This follows the lines of the judgment in *R.* v. *Cockerton*, C. A. (1901), 1 K. B. 726; 70 L. J. K. B. 441, 84 L. T. 488. When evening schools are carried on it must be in connection with the powers given by the Act with reference to higher education.

For provisions as to continuation schools, see secs. 3 and 10 of the Education Act, 1918, pp. 350 and 364.

(2.) The question as to the age up to which there might be admission to a public elementary school was considered by the divisional court in *R.* v. *Cockerton* [1901], 1 Q. B. 322. All doubt is now removed by the enactments set out above. The 56 & 57 Vict., c. 42, *post*, by sec. 11 provides that for the purposes of the Elementary Education Acts a blind or deaf boy or girl shall be deemed to be a child until the age of sixteen years, and that the period of compulsory education in the case of such a child shall extend to sixteen years. Sec. 11 of the 62 & 63 Vict., c. 32, *post*, contains a similar provision with regard to defective and epileptic children.

As regards the extension of the limits of age, with the consent of the Board of Education, in the case of any school where no suitable higher education is available within a reasonable distance of the school, it is to be observed that three miles, measured according to the nearest road from the residence of a child, is recognized in sec. 74 of the Education Act, 1870, as the maximum distance in connection with bye-laws as to school attendance. But see sec. 14 (1) on p. 272.

(3.) With regard to the power of councils to supply or aid the supply of education other than elementary, see secs. 2 and 3.

The training of teachers is a matter of national importance. This sub-section enables the Local Education Authorities to establish training colleges or aid institutions that already exist. They may be undenominational training colleges and hostels in connection with undenominational training colleges. Co-operation in aiding the supply and training of teachers is made a duty of the Local Education Authority for elementary education by sec. 2 (1) (*c*) of the Education Act, 1918. See also sec. 4 of the Education (Administrative Provisions) Act, 1909, on p. 337.

At the audit of the accounts of a County Council the District Auditor disallowed certain sums paid (*a*) for the supply of teas for 600 persons on the occasion of the laying of the foundation-stone of a training college for teachers and the foundation-stones of hostels in connection with the college, and (*b*) for preparing platforms and for the hire of tents, chairs, etc., on the occasion. The Auditor assigned the following as his reasons for the disallowance: (1) Because the expenditure represented by the payments disallowed was unnecessary, and there is no authority enabling a County Council to charge on their funds any expenses in connection with the ceremonial laying of the foundation-stone of any building erected by them; (2) because the said expenditure was not necessarily incurred by the County Council or their Education Committee in the exercise of their statutory powers or in the performance of their statutory duties; (3) because the said payments were not made in discharge of any debts legally due from the County Council; (4) because neither the County Council nor their Education Committee had any power in law to pay the said sums and to enter and charge them in their accounts as aforesaid. The members of the Council who authorised the payments were surcharged with the amounts. An appeal was made to the Local Government Board against the Auditor's decision, but the Board stated that they were of opinion that the disallowance and surcharge were lawfully made by the Auditor, and his decision was accordingly confirmed by them. The Board, however, remitted the disallowance and surcharge in the exercise of their equitable jurisdiction (*Local Government Chronicle*, 9th September, 1911).

Miscellaneous Provisions.

23.—(1.) The powers of a council under this Act shall include the provision of vehicles or the payment of reasonable travelling expenses for teachers or children attending school or college whenever the council shall consider such provision or payment required by the circumstances of their area or of any part thereof. (1)

(2.) The power of a council to supply or aid the supply of education, other than elementary, shall include power to make provision for the purpose outside their area in cases where they consider it expedient to do so in the interests of their area, and shall include power to provide or assist in providing scholarships for, and to pay or assist in paying the fees of, students . . . at schools or colleges or hostels within or without that area. (2)

(3.) The county councillors elected for an electoral division consisting wholly of a borough or urban district whose council are a Local Education Authority for the purpose of Part III. of this Act, or of some part of such a borough or district, shall not vote in respect of any question arising before the county council which relates only to matters under Part III. of this Act. (3)

(4.) The amount which would be produced by any rate in the pound shall be estimated for the purposes of this Act, in accordance with regulations made by the Local Government Board. (4)

(5.) . . .

(6.) A woman is not disqualified, either by sex or marriage, for being on any body of managers or education committee under this Act. (6)

(7.) Teachers in a school maintained but not provided by the Local Education Authority shall be in the same position as respects disqualification for office as members of the authority as teachers in a school provided by the authority. (7)

(8.) Population for the purposes of this Act shall be calculated according to the census of nineteen hundred and one. (8)

(9.) Sub-sections one and five of section eighty-seven of the Local Government Act, 1888 (which relate to local inquiries), shall apply with respect to any order, consent, sanction, or appoval which the Local Government Board are authorised to make or give under this Act. (9)

(10.) . . .

Additional Statutory Powers.

Sec. 14 (1) of the Education (Administrative Provisions) Act, 1907, declares that when a Local Education Authority provide suitable means of conveyance for a child between a reasonable distance of its home and a public elementary school, it shall not be a reasonable excuse for non-attendance for the purposes of sec. 74 of the Education Act, 1870, or sec. 11 of the Education Act, 1876, that there is no public elementary school open which such child can attend within the distance of its residence prescribed by those sections or by any bye-law made under sec. 74 of the Education Act, 1870.

Sec. 21 of the Education Act, 1918, provides as follows :—

"Where a Local Education Authority for the purposes of Part III. of the Education Act, 1902, are satisfied in the case of any children that, owing to the remoteness of their homes or the conditions under which the children are living, or other exceptional circumstances affecting the children, those children are not in a position to receive the full benefit of education by means of the ordinary provision made for the purpose by the authority, the authority may, with the approval of the Board of Education, make such arrangements, either of a permanent or temporary character, and including the provision of board and lodging, as they think best suited for the purpose of enabling those children to receive the benefit of efficient elementary education, and may for that purpose enter into such agreement with the parent of any such child as they think proper." The section also provides for the boarding out of the child, if possible, with a person belonging to the religious persuasion of the child's parents (see p. 383).

Sec. 24 of the Education Act, 1918, provides as follows :—

It is hereby declared that the powers as to the provision of scholarships conferred by sec. 23 (2) of the Education Act, 1902, and by sec. 11 of the Education (Administrative Provisions) Act, 1907, include a power to provide allowances for maintenance.

Sec. 35 of the Education Act, 1918, gives power to the Local Education Authority, with the consent of the Board of Education (who are to consult the authority of the area in which the proposed site is situated) to provide a public elementary school, in cases where it appears convenient to do so, on a site outside their area, for the use of children within their area.

Note 23.—(1.) The powers conferred by this sub-section refer to teachers or children attending school or college, and they apply not only to schools or colleges for higher education, but also to schools for elementary education.

For definition of the term "college," see sec. 24 (4).

The powers in question may be exercised by the Local Education Authorities and also by the councils of non-county boroughs and urban districts who supply or aid the supply of higher education. The sub-section will assist in removing difficulties. It will, for instance, enable an authority to facilitate the attendance of children at school by the provision of vehicles or payment of travelling expenses, where otherwise additional school accommodation might have to be provided in consequence of the distance from a school. It will also remove any doubt as to the power of the authority to incur expense of the character referred to when necessary for the attendance of teachers at pupil teachers' centres.

In connection with the provision of conveyances for children, sec. 3 of the Elementary Education (Defective and Epileptic Children) Act, 1899, may be referred to. Under that section the Local Education Authority may provide guides or conveyances for children who in the opinion of the authority are, by reason of any physical or mental defect, unable to attend school without guides or conveyances.

The Board of Education have stated that this provision is not limited to children attending special classes under that Act, but is intended also to meet the case of children who would otherwise be prevented from attending ordinary public elementary schools.

In providing a vehicle for the use of teachers or children under the powers given to the Local Education Authority by the above legislation the authority are bound to see that the vehicle is reasonably safe for the purpose for which it is provided, even though the person using it does so only by the permission or consent of the authority providing it, and has no legal claim to the use of it.

In *Shrimpton* v. *Hertfordshire County Council*, H. of L. (104 L. T. 145; 9 L. G. R. 397), the County Council, in pursuance of their statutory powers as Local Education Authority, provided a vehicle to convey certain children, who lived at a distance, to and from one of the council's schools. A child who lived nearer to the school than the others, but was not one of those for whom the vehicle was provided, was conveyed in it with the consent of the attendance officer, who made all the arrangements, acting with the consent of the Education Authority. While getting out of the vehicle this child fell and was injured. The jury found that the accident was due to the negligence of the driver, and the non-provision of a conductor and that the child was carried by consent of the County Council. On these findings judgment was entered for the plaintiff. That judgment was reversed by the Court of Appeal, but was restored by the House of Lords on the ground that there was evidence to support the finding of the jury whose verdict in the circumstances was entitled to stand. Lord Loreburn, L.C., said "When you have little children 5, 6, or 7 years of age, up to 10 or 12, and send them in a conveyance such as has been described, without anyone to look after them, I should be very much disposed to say, if I were on the jury myself, that it was not a reasonable or proper way of conveying them to school."

(2.) The powers referred to may be exercised by the council of a county or county borough who are a Local Education Authority under sec. 1, or the council of any non-county borough or urban district having powers under sec. 3.

As to the powers which may be exercised by the authorities referred

to for the supply or aiding the supply of education other than elementary, see secs. 2 and 3 and notes on those sections.

This sub-section follows generally the lines of sec. 1 of the Technical Instruction Act, 1891, which empowered a local authority "to make such provision in aid of the technical or manual instruction for the time being supplied in a school or institution outside its district as may, in the opinion of the authority, be necessary for the requirements of the district in cases where similar provision cannot be so advantageously made by aiding a school or institution within its district; and to provide or assist in providing scholarships for or pay or assist in paying the fees of students ordinarily resident in the district of the local authority at schools or institutions within or outside that district."

In the case of a county, it is often the case that a school or college situated in a county borough is more conveniently situated from the point of view of accessibility than one provided in any part of the county. Also see sec. 35 of the Education Act, 1918, noted above.

(3.) When the council of a non-county borough or urban district are under sec. 1 of the Act the Local Education Authority for the purpose of Part III. of the Act (elementary education), the county councillors elected for an electoral division consisting wholly or partly of any such non-county borough or district are not to vote in respect of any question arising before the county council as the Local Education Authority for the county, which relates only to matters under Part III. of the Act.

Were it not for this provision a county councillor in the case referred to would be entitled to vote on questions involving expenses to which the borough or district included wholly or partly in the electoral division which he represents would not be liable to contribute.

(4.) Under sec. 3 the amounts to be raised for supplying or aiding the supply of higher education in any year out of rates under the Act are not to exceed the amounts which would be produced by certain rates in the pound.

The first question which arises is whether for ascertaining the produce of the rate, at a certain rate in the pound, the full rateable value should be taken into account or only the assessable value under the Agricultural Rates Acts, *i.e.* the rateable value reduced by an amount equal to one-half of the rateable value of the agricultural land.

Apart from this the amount which a rate will produce at a certain rate in the pound depends to some extent on the amount which is irrecoverable by reason of the allowances to owners who pay the rates instead of the occupiers, empties, excusals on the ground of poverty, and other causes.

The Local Government Board have made regulations dated 22nd August, 1903, for all councils other than the London County Council; and dated 22nd October, 1904, for the London County Council. These regulations provide how the amount which would be produced by any rate in the pound is to be estimated for the purposes of the Act.

(6.) As to the schemes for the establishment of an education committee, see sec. 17. By sub-sec. 3 of that section it is enacted that the scheme shall provide for the inclusion of women as well as men among the members of the committee.

With respect to the appointment of managers of schools, whether provided by the Local Education Authority or not so provided, see sec. 6.

(7.) Teachers in a school provided by a Local Education Authority are disqualified for acting as members of that authority, but they may be members of the education committee. See statutory provisions as to disqualification in note to sec. 17 (4).

This provision places teachers in a school maintained but not provided by the Local Education Authority in the same position as regards disqualification for office as members of the Local Education Authority as teachers in a school provided by that authority.

(8.) This provision is for the purpose of determining the basis of calculation of the population which entitles the council of a non-county borough or of an urban district to be a Local Education Authority for the purposes of Part III. of the Act (elementary education). The population according to the census of 1901 is conclusive, and in the absence of further legislation will continue to be so, although a later decennial census may have been taken (see sec. 1 and note thereon with regard to extensions of areas).

(9.) The sanction of the Minister of Health is required to the borrowing of moneys by a county council under the Local Government Act, 1888, and by the council of a borough or urban district under the Public Health Act, 1875, for the purposes of the Elementary Education Acts and this Act (sec. 19 (1)). His consent is also required by sec. 2 (1) to the raising by the council of a county in any year for the purpose of supplying or aiding the supply of higher education an amount which would exceed the amount which would be produced by a rate of twopence in the pound. See also powers conferred on him by the Sch. II. (6) and Sch. III. (12).

Before deciding on such matters a local inquiry is usually held by an inspector at which any person interested may attend and be heard.

Sec. 87, Local Government Act, 1888.

The provisions of sub-secs. 1 and 5 of sec. 87 of the Local Government Act, 1888, relating to inquiries, which are by this sub-section made applicable to inquiries by the Local Government Board for the purposes of the Act, are as follows :—

87.—(1.) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case secs. 293 to 296, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted and in terms made applicable to this Act.

(5.) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

Secs. 293-296, Public Health Act, 1875.

The sections of the Public Health Act, 1875, above referred to, are as follows :—

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers* to those which poor law inspectors have under the Acts relating to the relief of the poor for the puposes of those Acts.

The powers and duties of the Local Government Board in regard to the matters mentioned above have been transferred to the Minister of Health.

Interpretation.

24.—(1.) Unless the context otherwise requires, any expression to which a special meaning is attached in the Elementary Education Acts, 1870 to 1900, shall have the same meaning in this Act. (1)

(2.) In this Act the expression "minor local authority" means, as respects any school, the council of any borough, or urban district, or the parish council or (where there is no parish council) the parish meeting of any parish which appears to the county council to be served by the school. Where the school appears to the county council to serve the area of more than one minor local authority, the county council shall make such provision as they think proper for joint appointment of managers by the authorities concerned. (2)

(3.) In this Act the expressions "powers," "duties," "property," and "liabilities" shall, unless the context otherwise requires, have the same meanings as in the Local Government Act, 1888. (3)

(4.) In this Act the expression "college" includes any educational institution, whether residential or not. (4)

(5.) In this Act, unless the context otherwise requires, the expression "trust deed" includes any instrument regulating the trusts or management of a school or college. (5)

Note 24.—(1.) A list of the words to which a special meaning is attached in the Acts referred to, as well as in other Acts printed in this volume will be found in the Index under the title "Interpretation of Terms."

* The powers referred to will be found in secs. 21 and 26 of the Poor Law Board Act, 1847, and sec. 14 of the Poor Law Amendment Act, 1834, sec. 21 empowers the inspector to summon witnesses and to examine them upon oath, also to examine upon oath witnesses who come voluntarily before him. He may require the party examined to make and subscribe a declaration of the truth of the matter respecting which he shall have been or shall be so examined. Costs and expenses of witnesses may be allowed as the (Local Government Board) may order (sec. 14 of the Poor Law Amendment Act, 1834).

No witness can be required in obedience to any such summons as above to go or travel more than ten miles from his place of abode (sec. 21 Poor Law Board Act, 1847). Sec. 26 of the last mentioned Act provides that any person who shall refuse or wilfully neglect to attend to any such summons, or to produce documents, shall be deemed guilty of a misdemeanour.

(2.) With regard to the appointment of managers by the minor local authorities, see sec. 6.

(3.) The meanings of the expressions "powers," "duties," "property," and "liabilities" in the Local Government Act, 1888, are given in sec. 100 of that Act, and are as follows:—

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities.

The expression "duties" includes responsibilities and obligations.

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any authority, includes any property which on the "appointed day" belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such . . . authority.

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose.

In sub-sec. (2) the expression "council of a borough," includes "council of a metropolitan borough" (Sch. I. (1) Education (London) Act, 1903), p. 235.

In Morris v. *Carnarvon County Council*, noted on p. 16, a dangerous door was erected by a school board before the premises passed to the County Council by virtue of this Act. It was held by Phillimore, J., that the contingency of the dangerous door causing an accident subsequently to the transfer of the school, was not a liability that passed, under Sch. II. (1) of this Act, to the County Council.

(4.) The expression "college" occurs in sec. 2 (2), sec. 4, sec. 20 (*a*), and sec. 23 ((1) and (2) and Sch III. (11)) of the Act.

(5.) The effect of this definition of trust deeds is to bring in not only deeds in the ordinary sense but also any of the following instruments if they provide for the appointment of trustees or give directions for the management of a school or its endowment, viz.:—

(1.) Orders of the Chancery Division of the High Court [and Court of Chancery];

(2.) Orders of a County Court under the Charitable Trusts Acts, 1853 and 1860;

(3.) Orders of the Charity Commissioners;

(4.) Schemes made under the Endowed Schools Acts;

(5.) Schemes made by the Education Department under sec. 75 of the Elementary Education Act, 1870;

(6.) In the case of privately owned schools, a lease or agreement in writing by which a school is let to managers for the purposes of a school may be usually regarded as a trust deed, and any trust declared therein attaches to the whole of the tenants' interest whatever it may be. (*Memorandum of Board of Education*, 27th December, 1902).

Provisions as to Proceedings, Transfer, &c., Application of Enactments and Repeal.

25.—(1.) The provisions set out in the First and Second Schedules to this Act relating to education committees and

managers, and to the transfer of property and officers, and adjustment, shall have effect for the purpose of carrying the provisions of this Act into effect.

(2.) In the application of the Elementary Education Acts, 1870 to 1900, and other provisions referred to in that schedule, the modifications specified in the Third Schedule to this Act shall have effect.

(3.) The enactments mentioned in the Fourth Schedule to this Act shall be repealed to the extent specified in the third column of that schedule.

For Sch I. and II., see pp. 213 and 217; Sch. III., p. 227; and Sch. IV., p. 229.

Application of Act to Scilly Islands.

26. For the purposes of this Act the Council of the Isles of Scilly shall be the Local Education Authority for the Scilly Islands, and the expenses of the council under this Act shall be general expenses of the Council.

The council of the Isles of Scilly, which by this section are constituted the Local Education Authority for the Scilly Islands, are the council constituted by a provisional order which was made by the Local Government Board under the powers conferred by sec. 49 of the Local Government Act, 1888. The order was confirmed by the Local Government Board Provisional Orders Confirmation (No. 6) Act, 1890.

Extent, Commencement, and Short Title.

27.—(1.) This Act shall not extend to Scotland or Ireland, or, except as expressly provided, to London. (1)

(2.) This Act shall, except as expressly provided, come into operation on the appointed day, and the appointed day shall be the twenty-sixth day of March nineteen hundred and three, or such other day, not being more than eighteen months later, as the Board of Education may appoint, and different days may be appointed for different purposes and for different provisions of this Act, and for different councils. (2)

(3.) The period during which local authorities may, under the Education Act, 1901, as renewed by the Education Act, 1901 (Renewal) Act, 1902, empower school boards to carry on the work of the schools and classes to which those Acts relate shall be extended to the appointed day, and in the case of London to the twenty-sixth day of March nineteen hundred and four. (3)

(4.) This Act may be cited as the Education Act, 1902, and the Elementary Education Acts, 1870 to 1900, and this Act may be cited as the Education Acts, 1870 to 1902. (4)

Note 27.—(1.) The Education Act, 1902, was, so far as applicable and subject to the provisions of the Education (London) Act, 1903, extended to London by the latter Act: see p. 232; also see Sch. I. (6), on p. 236.

(2.) The 26th March, 1903, was not generally the "appointed day" for the majority of areas. In their report for the year 1903-4, dated 7th September, 1904, the Board of Education stated that on the 1st August, 1904, the Act had come into operation in the area of every Local Education Authority with the exception of three counties, two boroughs and one urban district. In these six areas the Act was in operation by the end of September, 1904. For the "appointed day" as regards London, see sec. 5 (1) and also clause 6 of the Schedule of the Education (London) Act, 1903, p. 236.

(3.) The Acts referred to in sub-sec. (3) are spent and are therefore omitted from this book. The Education (London) Act, 1903, became law on the 14th August, 1903. The London County Council took over its responsibilities on the 1st May, 1904, for all purposes except certain minor provisions for which the appointed day was the 1st October, 1904.

(4.) See the note to sec. 52 of the Education Act, 1918.

The Elementary Education Acts, 1870 to 1900, which have not been repealed, are—

The Elementary Education Act, 1870 (33 & 34 Vict., c. 75).
The Elementary Education Act, 1873 (36 & 37 Vict., c. 86).
The Elementary Education Act, 1876 (39 & 40 Vict., c. 79).
The Elementary Education Act, 1880 (43 & 44 Vict., c. 23).
The Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict., c. 42).
The Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict., c. 32), and
The Elementary Education Act, 1900 (63 & 64 Vict., c. 53).

SCHEDULES.

FIRST SCHEDULE.

Provision as to Education Committee and Managers.

A.—*Education Committees.*

1. The council by whom an education committee is established may make regulations as to the quorum, proceedings, and place of meeting of that committee, but, subject to any such regulations, the quorum, proceedings, and place of meeting of the committee shall be such as the committee determine.

Note to Rule 1.—See sec. 17 of the Education Act, 1902, p. 168.

2. The chairman of the education committee at any meeting of the committee shall, in case of an equal division of votes, have a second or casting vote.

Note to Rule 2.—The chairman of the education committee is entitled to have his vote on any question recorded in the same manner as any other member of the committee present at the meeting, and if the votes are then found to be equal, he will be entitled to give a second or casting vote. If the chairman has not already voted, and the votes are

found to be equal, he may give his casting vote. When the chairman intends to vote on a question (irrespective of his casting vote), he should give his vote before declaring the numbers voting for and against the motion.

In *R.* v. *Griffiths* (1851), 7 A. & E., N. S., 164, the Court of Queen's Bench held that a resolution of a board of guardians appointing an officer was void in the following circumstances:—Boards of Guardians were empowered to elect officers by the votes of a majority of the Guardians present at a meeting. At a meeting for the election of clerk, twenty-two guardians attended. On their assembling, one of them said that he should not vote for any candidate but merely preside at the meeting as chairman. He did so and took the votes, of which there were eleven for one candidate and ten for another. The former was declared to be elected and entered on the office. The Court held that the chairman could not be considered as having, for the purpose of the election, withdrawn, and that the election was not determined by a majority of the guardians present. To the same effect was the decision in the Irish case of *R.* v. *Donovan*, 44 I. L. T. 136.

3. The proceedings of an education committee shall not be invalidated by any vacancy among its members or by any defect in the election, appointment, or qualification of any members thereof.

Note to Rule 3.—Compare *Myers* v. *Hennell* (1912), 2 Ch. 256, in notes to sec. 11 (pp. 156 and 160), and *Harries* v. *Crawfurd* (1918), 2 Ch. 158; 16 L. G. R. 662, in note to sec. 7 (p. 149).

4. Minutes of the proceedings of an education committee shall be kept in a book provided for that purpose, and a minute of those proceedings, signed at the same or next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting of the committee at which the minute is signed, shall be received in evidence without further proof.

Note to Rule 4.—See sec. 41 of the Education Act, 1918, on p. 411, as to the right of a ratepayer to inspect the minutes of the education committee.

5. Until the contrary is proved, an education committee shall be deemed to have been duly constituted and to have power to deal with any matter referred to in its minutes.

6. An education committee may, subject to any direction of the council, appoint such and so many sub-committees, consisting either wholly or partly of members of the committee, as the committee thinks fit.

Note to Rule 6.—As regards the liability of the printers of minutes of the proceedings of local authorities when the minutes contain statements which are alleged to be slanderous, the case of *Johnson* v. *Hazell, Watson, and Viney* (L. G. C. (1890) 91) may be referred to. In that case the defendants held a contract with the London School Board for printing, their contract including the printing of the minutes of the proceedings of the school board and committees. At a meeting of a committee of the board one of the members made certain statements with regard to the plaintiff, who had contracted for the erection of schools for the school board. These statements were alleged to be slanderous. The proceedings of the committee were printed by the

defendants in accordance with their contract. In consequence of this publication the plaintiff brought an action against the defendants as the publishers of the alleged slanderous statements. The defendants pleaded privilege, and that by sec. 87 of the Education Act, 1870, every ratepayer in the school district was entitled to inspect and take copies of these reports, and that copies had only been supplied to ratepayers. The jury found that the member of the school board did utter the words alleged by the plaintiff, and that he did not utter them *bonâ fide* believing them to be true, and they gave a verdict against the defendants for £2 on the ground that they had published the slanderous statements.

With regard to alleged slanderous statements at a meeting of a local authority by a member of the authority, the principles laid down in *Pittard* v. *Oliver* (Court of Appeal (1891), 1 Q. B. 474; 64 L. T. 758; 39 W. R. 311) apply. In that case the defendant, who was a member of a board of guardians, made certain statements at a meeting of the board and in the presence of reporters, which seriously reflected on the conduct of the clerk to the guardians. An action was brought against him in respect of the alleged slander, and the jury found that the statements were not in accordance with the facts, but that they were spoken honestly and without malice and in the belief that they were true, and they gave a verdict for the plaintiff for 40*s*. The question then arose whether the occasion was privileged. It was held by the Court of Appeal that although the statement, which had reference to a question which was under discussion by the guardians, was untrue, it would clearly have been privileged, as it was made without malice and with a *bonâ fide* belief in its truth, if it had been made to his brother guardians alone. Then as regards the presence of reporters, the fact of their presence was not sufficient to deprive him of his privilege while discharging his duty. The reporters were not present by his invitation and their presence was not subject to his control. Judgment was accordingly entered for the defendant.

As to the time within which an action for libel against a local authority must be brought, see *Reid* v. *Blisland School Board*, p. 67. In that case an action for libel was brought against the school board by a late schoolmaster of a school of the board. It appeared that the plaintiff and his wife were employed by the school board to their satisfaction for ten years. The board having given him notice to quit their service, he pointed out that under his agreement they must specify the grounds of his dismissal. At a subsequent meeting a resolution was read accusing the plaintiff of falsifying the attendance list, and also stating that the sewing taught was not of an efficient character. At the conclusion of the evidence for the plaintiff it was submitted for the school board that the Public Authorities Protection Act, 1893, applied, and that the action had not been commenced within six months as required by that Act. Mr. Justice Wills held that, looking to the provisions of the Act referred to, the judgment must be for the school board with costs.

B.—*Managers.*

1. A body of managers may choose their chairman, except in cases where there is an ex-officio chairman, and regulate their quorum and proceedings in such manner as they think fit, subject, in the case of the managers of a school provided by the Local Education Authority, to any directions of that authority.

Provided that the quorum shall not be less than three, or one-third of the whole number of managers, whichever is the greater.

2. Every question at a meeting of a body of managers shall be determined by a majority of the votes of the managers present and voting on the question, and in case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

Note to Rule 2.—As to the vote of the chairman, see note on First Schedule as to the education committee. In this case the decision is by the majority of the managers present and voting. That being so, the decision in the case cited in the note on art. 2 of the First Schedule would not apply here.

3. The proceedings of a body of managers shall not be invalidated by any vacancy in their number, or by any defect in the election, appointment, or qualification of any manager.

Note to Rule 3.—See *Myers* v. *Hennell* (1912), 2 Ch. 256, in notes on pp. 157 and 160; and *Harries* v. *Crawfurd* (1918), 2 Ch. 158; 16 L. G. R. 662, in note to sec. 7, p. 149.

4. The body of managers of a school provided by the Local Education Authority shall deal with such matters relating to the management of the school, and subject to such conditions and restrictions, as the Local Education Authority determine.

5. A manager of a school not provided by the Local Education Authority, appointed by that authority or by the minor local authority, shall be removable by the authority by whom he is appointed, and any such manager may resign his office.

6. The body of managers shall hold a meeting at least once in every three months.

7. Any two managers may convene a meeting of the body of the managers.

8. The minutes of the proceedings of every body of managers shall be kept in a book provided for that purpose.

9. A minute of the proceedings of a body of managers, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

10. The minutes of a body of managers shall be open to inspection by the Local Education Authority.

Notes to Rules 8 to 10.—See notes on minutes on p. 214 above.

11. Until the contrary is proved, a body of managers shall be deemed to be duly constituted and to have power to deal with the matters referred to in their minutes.

SECOND SCHEDULE.

Provisions as to Transfer of Property and Officers, and Adjustment.

1. The property, powers, rights, and liabilities (including any property, powers, rights, and liabilities vested, conferred, or arising under any local Act or any trust deed) of any school board or school attendance committee existing at the appointed day shall be transferred to the council exercising the powers of the school board.

Note to Rule 1.—This rule refers to the transfer of the property, powers, rights, and liabilities of a school board or school attendance committee to the Local Education Authority who exercise the powers of the school board under sec. 5 of the Act.

For definition of the terms "property," "powers," and "liabilities," see sec. 24 (3). The contingency of an accident happening through a defect in structure of a door transferred from a school board to a County Council under the above provision is not a "liability" which was transferred to the Council. (*Morris* v. *Carnarvon County Council* (1910), 1 K. B., on pp. 166-7; per Phillimore, J.).

As to the "appointed day," see sec. 27.

If the powers of a school board transferred to the Local Education Authority include power to appoint governors of a secondary school, the powers so conferred would be included in the term "rights of a school board," which are transferred by this rule (Secretary to the Board of Education, Parl. Debates (1902), vol. 15, 847).

As to the charging of the expenses of a Local Education Authority incurred to meet the liabilities on account of loans or rent of any school board transferred to them, see sec. 18 (1) (*d*).

Voluntary schools are not "transferred" to the Local Education Authorities, but the Local Education Authority are responsible for the cost of the maintenance of voluntary schools.

In *Oldham Corporation* v. *Bank of England* (1904), 2 Ch. 716; 2 L. G. R. 1324, the Court of Appeal held that on the "appointed day" annuities standing in the Bank of England in the name of the Oldham School Board automatically vested in the corporation of Oldham as the Local Education Authority and that no further transfer by way of entry in the Bank's books was necessary.

That case was distinguished in *Wallsend Borough Council* v. *Northumberland County Council* (1906), 2 Ch. 506; 4 L. G. R. 1141, where it was held that where a united school district became severed by virtue of sec. 1 of the Education Act, 1902, there was no automatic severance of property and liabilities according to areas under Sch. II. (1) of the Act, but an adjustment under Rule 22 of Sch. II. was necessary.

2. Where, under the provisions of this Act, any council relinquishes its powers and duties in favour of a county council, any property or rights acquired and any liabilities incurred, for the purpose of the performance of the powers and duties relinquished, including any property or rights vested or arising, or any liabilities incurred, under any local Act or trust deed, shall be transferred to the county council.

Note to Rule 2.—Under sec. 20 (*b*) the council of a non-county borough or urban district may, subject to the conditions referred to in that section, relinquish in favour of the county council their powers under sec. 3 as regards supplying or aiding the supply of education other than elementary, and the council of a non-county borough or urban district, when they are the Local Education Authority under sec. 1 of the Act for the purposes of Part III. of the Act as to elementary education, may also, subject to the like conditions, relinquish their powers in favour of the county council. This rule applies to the transfer to the county council of property, rights, and liabilities, in the case of any such relinquishment. For definition of the terms "property" and "liabilities," see sec. 24 (3).

3. Any loans transferred to a council under this Act shall, for the purpose of the limitation on the powers of the council to borrow, be treated as money borrowed under this Act.

Note to Rule 3.—Sec. 19 (2) provides that money borrowed under this Act shall not be reckoned as part of the total debt of a county for the purposes of sec. 69 of the Local Government Act, 1888, or as part of the debt of a county borough, borough, or urban district, for the purpose of the limitation of borrowing under sub-secs. (2) and (3) of sec. 234 of the Public Health Act, 1875. This rule brings within the terms of the enactment first referred to any loans transferred to a council under this Act.

4. Any liability of an urban district council incurred under the Technical Instruction Acts, 1889 and 1891, and charged on any fund or rate, shall, by virtue of this Act, become charged on the fund or rate out of which the expenses of the council under this Act are payable, instead of on the first-mentioned fund or rate.

Note to Rule 4.—The Technical Instruction Acts, 1889 and 1891, were repealed by this Act. The liabilities incurred in the case of an urban district, were under those Acts charged on the district fund and general district rate. In the levy of a general district rate, tithes, or any tithe commutation rent-charge, land used as arable, meadow, or pasture ground only, or as wood-lands, market-gardens, and nursery grounds, and land covered with water or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, are assessed in the proportion of one-fourth part only of the net annual value. The expenses of an urban district council under this Act (see sec. 18 (1)) will, under sec. 33 of the Elementary Education Act, 1876, be defrayed out of the poor rate of the parish or parishes comprised in the district. There are no exemptions in the case of the poor rate similar to those above referred to with regard to a general district rate, and it is in consequence of this that the provision in this rule is made.

5. Section two of this Act shall apply to any balance of the residue under section one of the Local Taxation (Customs and Excise) Act, 1890, remaining unexpended and unappropriated by any council at the appointed day.

Note to Rule 5.—Sec. 2 of the Act provides for the appropriation of the residue under sec. 1 of the Local Taxation (Customs and Excise) Act, 1890, to the supply or aiding the supply of education other than

elementary. This rule brought within that enactment any balance of the residue remaining unexpended and unappropriated by any council at the "appointed day."

As to the "appointed day," see sec. 27.

6. Where the liabilities of a school board transferred to the Local Education Authority under this Act comprise a liability on account of money advanced by that authority to the school board, the Local Government Board may make such orders as they think fit for providing for the repayment of any debts incurred by the authority for the purposes of those advances within a period fixed by the order, and, in case the money advanced to the school board has been money standing to the credit of any sinking fund or redemption fund or capital money applied under the Local Government Acts, 1888 and 1894, or either of them, for the repayment to the proper fund or account of the amount so advanced.

Any order of the Local Government Board made under this provision shall have effect as if enacted in this Act.

Note to Rule 6.—In the application of par. 6 to London the Treasury is to be substituted for Local Government Board. See Sch. I. 8, p. 237.

Under local Acts the councils of certain boroughs had been empowered to raise moneys for the purpose of loans to school boards. This provision applies to cases where such advances had been made to school boards and there were liabilities outstanding with respect to them which under the Act were transferred to the council by whom the moneys were advanced. As to the provision in this matter made for London, see sec. 3 of the Public Works Loans Act, 1905, noted under sec. 1 of the Education (London) Act, 1903, on p. 232.

7. Where a district council ceases by reason of this Act to be a school authority within the meaning of the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Act, 1899, any property or rights acquired and any liabilities incurred under those Acts shall be transferred to the county council, and, notwithstanding anything in this Act, the county council may raise any expenses incurred by them to meet any liability of a school authority under those Acts (whether a district council or not), and transferred to the county council, off the whole of their area, or off any parish or parishes which in the opinion of the council are served by the school in respect of which the liability has been incurred.

Note to Rule 7.—Under the Elementary Education (Blind and Deaf Children) Act, 1893, and under the Elementary Education (Defective and Epileptic Children) Act, 1899, district councils, where there were no school boards, were the school authorities for the purpose of those Acts. The powers of the district councils under those Acts are now transferred to the Local Education Authority, who, under sec. 5 of this Act, exercise all the powers of a school board. The powers of the district councils as school authorities under those Acts necessarily ceased when the county council became the Local Education Authority.

8. Sections eighty-five to eighty-eight of the Local Government Act, 1894 (which contain transitory provisions), shall apply with respect to any transfer mentioned in this schedule. subject as follows :—

(*a*) References to "the appointed day" and to "the passing of this Act" shall be construed, as respects a case of relinquishment of powers and duties, as references to the date on which the relinquishment takes effect ; and

(*b*) The powers and duties of a school board or school attendance committee which is abolished , or a council which ceases under the provisions of this Act to exercise powers and duties, shall be deemed to be powers and duties transferred under this Act ; and

(*c*) Sub-sections four and five of section eighty-five shall not apply.

Note to Rule 8.—For "appointed day," see sec. 27, and with regard to relinquishment of powers and duties, see sec. 20 (*b*).

As to the abolition of school boards and school attendance committees, see sec. 5.

With regard to district councils which cease to be school authorities under the Elementary Education (Blind and Deaf Children) Act, 1893, *post*, and the Elementary Education (Defective and Epileptic Children) Act, 1899, *post*, see Rule 7.

The provisions of secs. 85, 86 and 88 (1) of the Local Government Act, 1894, as applied, are spent : secs. 87 and 88 (2) are as follows :—

Local Government Act, 1894.

87. All such bye-laws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council and may be revoked or altered accordingly.

88 (2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

9. The disqualification of any persons who are, at the time of the passing of this Act, members of any council, and who will become disqualified for office in consequence of this Act, shall not, if the council so resolve, take effect until a day fixed by the resolution, not being later than the next ordinary day of retirement of councillors in the case of a county council, the next ordinary day of election of councillors in the case of the council of a borough, and the fifteenth day of April in the year nineteen hundred and four in the case of an urban district council.

10. No election of members of a school board shall be held after the passing of this Act, and the term of office of members of any school board holding office at the passing of this Act, or appointed to fill casual vacancies after that date, shall continue to the appointed day, and the Board of Education may make orders with respect to any matter which it appears to them necessary or expedient to deal with for the purpose of carrying this provision into effect, and any order so made shall operate as if enacted in this Act.

11. Where required for the purpose of bringing the accounts of a school to a close before the end of the financial year of the school, or for the purpose of meeting any change consequent on this Act, the Board of Education may calculate any parliamentary grant in respect of any month or other period less than a year, and may pay any parliamentary grant which has accrued before the appointed day at such times and in such manner as they think fit.

12. Any parliamentary grant payable to a public elementary school not provided by a school board in respect of a period before the appointed day shall be paid to the persons who were managers of the school immediately before that day and shall be applied by them in payment of the outstanding liabilities on account of the school, and so far as not required for that purpose shall be paid to the persons who are managers of the school for the purposes of this Act and shall be applied by them for the purposes for which provision is to be made under this Act by those managers, or for the benefit of any general fund applicable for those purposes: Provided that the Board of Education may, if they think fit, pay any share of the aid grant under the Voluntary Schools Act, 1897, allotted to an association of voluntary schools, to the governing body of that association, if such governing body satisfy the Board of Education that proper arrangements have been made for the application of any sum so paid.

Note to Rule 12.—As to schools which are to be treated as provided by the Local Education Authority, see Rule 13 and notes thereon.

The "appointed day" is that referred to in sec. 27.

With regard to the purposes for which provision had to be made under the Act by managers of a public elementary school not provided by the Local Education Authority, see sec. 7 (1) (*d*) and (2).

The parliamentary grants referred to in this rule included the grants under the Voluntary Schools Act, 1897, the grants under that Act being payable up to the "appointed day."

The managers of schools not provided by the Local Education Authority were allowed to appropriate the credit balances they had in hand on the "appointed day," which were not required for meeting liabilities, to the purposes for which the managers had under the Act to make provision.

The Board of Education suggested to the governing bodies of associations of voluntary schools, that these governing bodies, could best render assistance to the managers of schools not provided by the Local

Education Authority by undertaking the administration of a common fund, of which the sums received from the aid grant in respect of a period before the "appointed day" would form the nucleus, and in which managers could invest or deposit any further sums which might from time to time come into their possession. By these means a mutual insurance fund would be created, upon which the managers of individual schools could depend for assistance towards the expense of such repairs and alterations as they may be called upon from time to time to carry out.

13. Any school which has been provided by a school board or is deemed to have been so provided shall be treated for the purposes of the Elementary Education Acts, 1870 to 1900, and this Act, as a school which has been provided by the Local Education Authority, or which is deemed to have been so provided, as the case may be.

Note to Rule 13.—Schools which had been transferred to school boards by the managers under sec. 23 of the Education Act, 1870, were, to such extent and during such time as the school board had, under the terms of an arrangement under that section, any control over the schools, to be deemed to be schools provided by the school board.

Under sec. 13 of the Elementary Education Act, 1873, it was provided that every school connected with an endowment, charity, or trust, of which the school board were constituted trustees, should be deemed to be a school provided by the school board.

Schools which have been so transferred by managers or which have been connected with an endowment, charity, or trust, of which the school board were trustees, are also to be deemed to be schools provided by the Local Education Authority.

14. The Local Education Authority shall be entitled to use for the purposes of the school any school furniture and apparatus belonging to trustees or managers of any public elementary school not provided by a school board, and in use for the purposes of the school before the appointed day.

Note to Rule 14.—With regard to the "appointed day," see sec. 27, and for definition of public elementary school, see note on sec. 6. As to schools to be treated as provided by the Local Education Authority, see Rule 13 in this Schedule.

See also the provision in sec. 7 (2) as to the use by the managers of the school furniture out of school hours.

15. During the period between the passing of this Act and the appointed day, the managers of any public elementary school, whether provided by a school board or not, and any school attendance committee, shall furnish to the council, which will on the appointed day become the Local Education Authority, such information as that council may reasonably require.

16. The officers of any authority whose property, rights, and liabilities are transferred under this Act to any council shall be transferred to and become the officers of that council, but that council may abolish the office of any such officer whose office they deem unnecessary.

17. Every officer so transferred shall hold his office by the same tenure and on the same terms and conditions as before the transfer, and while performing the same duties shall receive not less salary or remuneration than theretofore, but if any such officer is required to perform duties which are not analogous to or which are an unreasonable addition to those which he is required to perform at the date of the transfer, he may relinquish his office, and any officer who so relinquishes his office, or whose office is abolished, shall be entitled to compensation under this Act.

Note to Rule 17.—As regards cases where it has been the practice from time to time to re-appoint an officer, see *Q.* v. *Mayor, &c., of Norwich* (8 A. and E. 633). In that case the steward of a borough removed from office under the 5 & 6 Wm. 4, c. 76, demanded compensation under sec. 66 of that Act as for an office held for life. The town council, however, declared that the office held was only annual. The Lords of the Treasury on appeal after hearing the parties awarded compensation on the principle that the office was held for life. On motion for a *mandamus* to the corporation to execute a compensation bond there were affidavits that at certain meetings of the corporation held annually on the 3rd of May the steward was elected, and was considered to be appointed until the next 3rd of May. Entries in the corporation book were also referred to showing appointments made for a year, and it appeared that from the time of Queen Anne re-appointments of the steward from year to year had been made. It was admitted by the town council that whatever might have been the legal right of the corporation it was not exercised, and no instance was attempted to be shown of the steward having been removed from office or ceasing to hold it except with his own consent. The rule for a *mandamus* was made absolute, Lord Denman, C.J., saying that the judgment of the Lords Commissioners of the Treasury was the same in effect as if they had said, "We do not find that there is a legal tenure of office for life, but there is an interest equivalent to that," and they grant compensation accordingly. I am of opinion that their decision was right.

As to the provisions which apply to compensation when the office of an officer is abolished or it is relinquished by him on the ground that he is required to perform duties which are not analogous to or which are an unreasonable addition to those which he was required to perform at the date of transfer, see Rules 18 and 21.

18. A council may, if they think fit, take into account continuous service under any school boards or school attendance committees in order to calculate the total period of service of any officer entitled to compensation under this Act.

19. If an officer of any authority to which the Poor Law Officers' Superannuation Act, 1896, applies is under this Act transferred to any council, and has made the annual contributions required to be made under that Act, the provisions of that Act shall apply, subject to such modifications as the Local Government Board may by order direct for the purpose of making that Act applicable to the case.

Note to Rule 19.—This rule is to meet the case of an officer who held at the time of transfer an office to which the Poor Law Officers'

Superannuation Act, 1896, applied, and who is transferred to an office which is not within the terms of that Act. The provisions of the Poor Law Officers' Superannuation Act, subject to such modifications as the Local Government Board may by order direct, are to continue applicable to the officer notwithstanding the transfer.

20. Any Local Education Authority who have established any pension scheme, or scheme for the superannuation of their officers, may admit to the benefits of that scheme any officers transferred under this Act on such terms and conditions as they think fit.

Note to Rule 20.—In the case of the following boroughs and urban districts pension schemes or schemes for the superannuation of officers had been authorised by local Acts :—Barrow-in-Furness, Birmingham, Bolton, Bootle, Burton-on-Trent, Cardiff, Coventry, Croydon, East Ham, Halifax, Hastings, Leicester, Liverpool, Manchester, Margate, St. Helen's, Smethwick, Southport, South Shields, Wallasey, Warrington, West Bromwich, and Wigan.

The provision in this rule will meet, for instance, the case of an officer of the school board of a county borough who was transferred to the council of the borough as a Local Education Authority, when a pension scheme or scheme for the superannuation of the officers of the council had been established.

The London School Board are the only school board which established a pension scheme for their officers. See provisions in Act of the session of 1902 obtained by the school board (2 Edw. 7, c. xxxvi.).

21. Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply as respects officers transferred under this Act, and also (with the necessary modifications) to any other officers who, by virtue of this Act or anything done in pursuance or in consequence of this Act, suffer direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, in like manner as it applies to officers transferred under this Act, subject as follows :

(*a*) Any reference in that section to the county council shall include a reference to a borough or urban district council ; and

(*b*) References in that section to " the passing of this Act " shall be construed, as respects a case of relinquishment of powers and duties, as references to the date on which the relinquishment takes effect ; and

(*c*) Any reference to powers transferred shall be construed as a reference to property transferred ; and

(*d*) Any expenses shall be paid out of the fund or rate out of which the expenses of a council under this Act are paid, and, if any compensation is payable otherwise than by way of an annual sum, the payment of that compensation shall be a purpose for which a council may borrow for the purposes of this Act.

Note to Rule 21.—See note to sec. 49 of the Education Act, 1918, in which sec. 120 of the Local Government Act, 1888, is set out (p. 428).

The captain-superintendent of the training ship "Shaftesbury" applied under Sch. II., clause 21 of the Education Act, 1902, for compensation for the abolition of his office. He had served since 1877 under the London School Board, but when the powers and duties of that Board were transferred to the London County Council as the Local Education Authority the council determined to discontinue the use of the ship and gave the Captain six months' notice. The Court held that the abolition of his office was not in pursuance of or in consequence of the Act, and that therefore he was not entitled to compensation. (*R.* v. *London County Council, Ex parte Scriven*, 23 T. L. R. 493.)

It was held by Lord Alverstone, C.J., and Ridley, J, Darling, J. dissenting, that a rate collector in the employment of the City of London Corporation was not entitled to compensation under clause 21 of Sch. II. of the Act of 1902, by reason of loss of poundage incurred through the education rate being no longer collected by the Corporation's officer. Lord Alverstone thought that the provision did not apply to persons in the employment of an authority from whom no powers and no property are taken away. (*R.* v. *London County Council, Ex parte Norris* (1906) 1 K. B. 346; 4 L. G. R. 305.)

22. Section sixty-eight of the Local Government Act, 1894 (which relates to the adjustment of property and liabilities), shall apply with respect to any adjustment required for the purposes of this Act.

Sec. 68 of the Local Government Act, 1894, provides as follows :—

68—(1.) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties of the agreement.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board : Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board*.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board*, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such

* Now the Minister of Health.

authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

In connection with adjustments, the case of *The Llanwonno School Board* v. *The Ystradyfodwg School Board* (62 J. P. 644), may be referred to. By an order of the county council of Glamorgan made in 1894, and confirmed, with certain modifications, by the Local Government Board a part of the parish of Llanwonno was transferred to the parish of Ystradyfodwg. Certain schools called the Porth Schools, up to that time vested in the Llanwonno school board, became vested in the Ystradyfodwg school board. In 1888 and subsequent years additions and alterations had been made in the school premises. The cost was paid out of revenue, with the aid of an increased rate on the whole parish of Llanwonno, before the date of the order of transference. The Llanwonno school board claimed to be paid a proportionate part of the cost of these additions and alterations, and the question for the Court was whether there was anything for the arbitrator to consider. The L.G.B. order contained the following provisions :— Article II. "From and after the day when any part of any existing parish ceases, in pursuance of the order, to be within the district of the school board of such existing parish, the powers, duties, and liabilities of such school board in respect of such part of the existing parish shall cease and determine, and all buildings, with their fittings, being the property of such school board and situate within such part of the parish shall be transferred to and shall vest in the school board of the parish in which such part is included by the order, and all contracts, liabilities, and engagements attaching to or incurred by the school board of the existing parish in respect of such buildings, or exclusively in respect of the said part of the existing parish, shall vest in and attach to and be enjoyed and discharged by the school board of the parish to which the said part of the existing parish is transferred." By article XIII. it was provided that any question "with regard to the interests" of the school boards in the schools should be dealt with in an adjustment under sec. 68 of the Local Government Act, 1894. For the Llanwonno school board it was argued that something should be paid to them for their outlay on the school. Article 11 of the order did not provide that the Ystradyfodwg school board should have the school buildings without any payment in respect of them. For the latter school board it was said that the Llanwonno board had not incurred any expense by the transfer, and that as the fact that ten years ago they had spent money on enlarging the school out of their income did not give them any claim, there was nothing on which to arbitrate. The Court (Ridley and Channell, JJ.), held that there was something to be adjusted. An adjustment might have been made by the order, but this was not done, and article XIII. showed that there was no intention by that order to make an adjustment of the interests.

In the case of *Attorney-General* v. *Essex County Council* (1907), 71 J.P. 557; 24 T. L. R. 22, a school board district ceased to exist, by reason of the provisions of sec. 1 of the Education Act, 1902, part of the district becoming, for educational purposes, part of an urban district, and the rest coming under the jurisdiction of the county council. A dispute having arisen between the county council and the urban district council as to the proportion which each was to contribute towards

the cost of education in the added parts, an agreement was arrived at under the powers of clause 22 of Sch. II., of the Act of 1902, by which separate accounts of the cost of education in the added parts were to be kept, excluding establishment and capital expenditure, the amounts shown by such accounts were to be added together, and the net charge for the same on the rates was to be annually divided between the county council and the urban council in the proportion that the rateable value of the added parts bore to each other. In an action to have the agreement declared *ultra vires*:—Held by Kekewich, J., that the agreement was a compromise of the dispute, and was therefore binding.

See also *Hebburn U.D.C.* v. *Hedworth, &c. United District School Board* (2 L. G. R. 821) as to an adjustment in three areas in which the Act came into operation on different appointed days.

THIRD SCHEDULE.

Modification of Acts, &c.

1. Reference to school boards and school districts shall be construed as references to Local Education Authorities and the areas for which they act. . . .

2. References to the school fund or local rate shall be construed as references to the fund or rate out of which the expenses of the Local Education Authority are payable.

3. In section thirty-eight of the Elementary Education Act, 1876, references to members of a school board shall be construed as references to members of the education committee or of any sub-committee appointed by that committee for school attendance purposes.

4. The power of making bye-laws shall (where the Local Education Authority is a county council) include a power of making different bye-laws for different parts of the area of the authority.

5. . . .

6. The words "in the opinion of the Board of Education" shall be substituted for the words "in their opinion" in the first paragraph of section eighteen of the Elementary Education Act, 1870.

7. Section ninety-nine of the Elementary Education Act, 1870, shall apply to the fulfilment of any conditions, the performance of any duties, and the exercise of any powers under this Act as it applies to the fulfilment of conditions required in pursuance of that Act to be fulfilled in order to obtain a parliamentary grant.

8. . . . a reference to the Local Government Board shall be substituted . . . for the reference to the Education Department in section five of the Elementary Education (Blind and Deaf Children) Act, 1893.

Note 8.—The powers of the Local Government Board have been transferred to the Minister of Health by the Ministry of Health Act, 1919.

9. A reference to the provisions of this Act relating to the enforcement of the performance of the Local Education Authority's duties by *mandamus* shall be substituted in section two of the Elementary Education Act, 1880, for the reference to section twenty-seven of the Elementary Education Act, 1876.

10. The substitutions for school boards, school districts, school fund, and local rate made by this schedule shall, unless the context otherwise requires, be made in any enactment referring to or applying the Elementary Education Acts, 1870 to 1900, or any of them, so far as the reference or application extends.

11. References in any enactment or in any provision of a scheme made under the Charitable Trusts Acts, 1853 to 1894, or the Endowed Schools Acts, 1869 to 1889, or the Elementary Education Acts, 1870 to 1900, to any provisions of the Technical Instruction Acts, 1889 and 1891, or either of those Acts shall, unless the context otherwise requires, be construed as references to the provisions of Part II. of this Act, and the provisions of this Act shall apply with respect to any school, college, or hostel established, and to any obligation incurred, under the Technical Instruction Acts, 1889 and 1891, as if the school, college, or hostel had been established or the obligation incurred under Part II. of this Act.

12. The Local Government Board may, after consultation with the Board of Education, by order make such adaptations in the provisions of any local Act (including any Act to confirm a Provisional Order and any scheme under the Municipal Corporations Act, 1882, as amended by any subsequent Act) as may seem to them to be necessary to make those provisions conform with the provisions of this Act, and may also in like manner, on the application of any council who have power as to education under this Act and have also powers as to education under any local Act, make such modifications in the local Act as will enable the powers under that Act to be exercised as if they were powers under this Act.

Any order made under this provision shall operate as if enacted in this Act.

Note to Rules 1 to 9.—The provisions in these rules are noted in connection with the sections to which reference is made.

Note to Rule 11.—The Technical Instruction Acts, 1889 and 1891, were repealed by the Education Act, 1902. For provisions of Part II. of the Act, see secs. 2 to 4.

For definition of "college," see sec. 24 (4); and as to "hostels," see note to sec. 2.

Note to Rule 12.—The adaption and modification of local Acts, as defined by the rule, may be made by the Minister of Health by order, and the order will not require confirmation by Parliament as in the case of a provisional order. As to the last sentence, see the note on p. 202.

FOURTH SCHEDULE.

Enactments Repealed.

PART I.

Session and Chapter.	Short Title.	Extent of Repeal.
52 & 53 Vict. c. 76.	The Technical Instruction Act, 1889,	The whole Act.
53 & 54 Vict. c. 60.	The Local Taxation (Customs and Excise) Act, 1890.	In section one, sub-sections two and three.
54 & 55 Vict. c. 4.	The Technical Instruction Act, 1891.	The whole Act.

PART II.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section four; section five except so far as it defines public school accommodation; section six; sections eight to thirteen; sections fifteen and sixteen; section eighteen from "If at any time" to the end of the section; in section nineteen the words "whether in "obedience to any requisition or not"; sections twenty-nine to thirty-four; in section thirty-five the words "a clerk and a treasurer and other" and the words from "but "no such appointment" to "member of the "board"; sections forty to forty-eight; sections forty-nine to fifty-one; in section fifty-two the words "under the provisions of this "Act with respect to the appointment of a "body of managers"; sections fifty-three to fifty-six; sections sixty to sixty-six; in section sixty-nine the words "in the metropolis" and the words from "appointed under this "Act" to "returns under this Act"; in section seventy-three the words "of the "school district," the words from "(if any) "or if" to "inquiry relates," and the words "or if there is no school board as a debt "due from the rating authority"; sections seventy-seven and seventy-nine; sections eighty-seven, eighty-eight, and ninety; sections ninety-three; the first proviso of section ninety-seven; the First Schedule; the Second Schedule, except the Third Part; the Third Schedule.

Session and Chapter.	Short Title.	Extent of Repeal.
36 & 37 Vict. c. 86.	The Elementary Education Act, 1873.	Sections five to twelve; sections seventeen and eighteen; sections twenty-one and twenty-six; the First Schedule; the Second Schedule; the Third Schedule.
37 & 38 Vict. c. 90.	The Elementary Education (Orders) Act, 1874.	The whole Act.
39 & 40 c. 79.	The Elementary Education Act, 1876.	Section seven, from "and (2) in every" to "appointing the committee," and the words "and school attendance committee"; in section fifteen the words "not exceeding "fifty"; section twenty-one; section twenty-three to "or pay any fees"; section twenty-seven; in section twenty-eight, the words "but subject in the case of a school "attendance committee to the approval "herein-after mentioned" and the words "or the officers of the council or guardians "by whom the committee are appointed"; sections thirty, thirty-one, thirty-two, thirty-three (except as applied by this Act), and thirty-four; section thirty-six; in section thirty-seven the words "or local authority"; in section thirty-eight the words "or local "authority" and "or school attendance "committee"; sections forty-one, forty-two, forty-three, and forty-four; section forty-nine; the Second Schedule; Third Schedule.
43 & 44 Vict. c. 23.	The Elementary Education Act, 1880.	Section three.
53 & 54 Vict. c. 22.	The Education Code (1890) Act, 1890.	Section one.
54 & 55 Vict. c. 56.	The Elementary Education Act, 1891.	Sections five, six, and seven.
56 & 57 Vict. c. 42.	The Elementary Education (Blind and Deaf Children) Act, 1893.	Section four from "(*b*) for an area" to the end of the section. Sub-sections (3) and (4) of section five. Section six.
59 & 60 Vict. c. 16.	The Agricultural Rates Act, 1896.	In section seven the words "a school board "for a school district which is a parish or," and sub-section (3).
60 & 61 Vict. c. 5.	The Voluntary Schools Act, 1897.	Section one.

Session and Chapter.	Short Title.	Extent of Repeal.
60 & 61 Vict. c. 16.	The Elementary Education Act, 1897.	The whole Act.
62 & 63 Vict. c. 32.	The Elementary Education (Defectiveand Epileptic Children) Act, 1899.	In section six the proviso.
63 & 64 Vict. c. 53.	The Elementary Education Act, 1900.	Section three.

The following case has been recently decided under sec. 7 of the Education Act, 1902 (see p. 150, above).

The education committee of the Eccles Corporation resolved that the teachers in a non-provided school should not be absent, except for personal illness without the permission of the committee, obtained through their Secretary, and the consent of the Managers. The teachers of the school had contracted with the managers and not with the Local Education Authority or their Education Committee. A teacher was absent for an afternoon for an urgent reason by leave from her headmaster, but she did not obtain permission from the Secretary of the Education Committee. In consequence, the Committee refused to pay her salary after a certain day and afterwards directed that the Managers should ask her to resign, but the Managers refused to do so. Later, the Committee, purporting to act, under sec. 7 (1) (*a*) of the Education Act, 1902, gave the teacher a month's notice, on educational grounds, to terminate her contract. The teacher and the managers then brought an action against the Corporation, as the Local Education Authority, for a declaration that the notice of dismissal served on the teacher was invalid. It was held by Mr. Justice Younger that there were no "educational grounds" for the teacher's dismissal, that the resolution of the Corporation as to the leave to be obtained before teachers could be absent was not binding in any way on the teachers of the non-provided schools, that there was no contract between the Local Education Authority and those teachers, and that the teacher was entitled to a declaration that the direction given to the managers to ask the teacher to resign and the notice of dismissal given to the teacher were each of them invalid. The engagement of the teacher was not affected thereby and the Court had jurisdiction in the matter notwithstanding sec. 7 (3) of the Act of 1902, *Martin* v. *Eccles Corporation* (1919) 1 Ch. 287.

EDUCATION (LONDON) ACT, 1903.

(3 Edw. 7, Ch. 24.)

An Act to extend and adapt the Education Act, 1902, to London.

[14*th August*, 1903.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Application of Education Act, 1902, to London.

1. The Education Act, 1902 (in this Act referred to as the principal Act), shall so far as applicable, and subject to the provisions of this Act, apply to London.

Note 1.—The effect of this enactment was to transfer to the London County Council the property, powers, rights and liabilities of the London School Board and to substitute the County Council for the School Board as the Local Education Authority for the purposes of elementary education in London and also to make it the duty of the County Council to consider the educational needs of their area as laid down in sec. 2 of the Education Act, 1902. The London County Council took over its responsibilities for all purposes on the 1st May, 1904, except certain minor provisions for which the appointed day (see sec. 5 (1) *post*), was the 1st October, 1904.

Section 3 of the Public Works Loans Act, 1905, provides as follows :—

Consolidation of loans to London School Board transferred to London County Council. 3 Edw. 7, c. 24.

" 3. Whereas by the Education (London) Act, 1903, there has been transferred to the London County Council the liability for the repayment to the Public Works Loan Commissioners of all loans advanced by the Commissioners for the repayment whereof the London School Board were prior to the transfer liable :

" And whereas a large proportion of those loans bear interest at the rate of three pounds ten shillings per cent. per annum, and are by the terms of the borrowing repayable by equal yearly or half-yearly instalments of principal or of principal and interest combined within periods which will expire at various dates in or between the years nineteen hundred and eight and ninteeen hundred and twenty-nine :

" And whereas the Commissioners and the London County Council desire to enter into such an agreement with respect to the repayment of the said loans as is herein-after mentioned, and it is expedient that they should be authorised to do so :

" Therefore it shall be lawful for the Commissioners and the London County Council to enter into an agreement whereby the outstanding balances of such of the said loans as bear interest at three pounds ten shillings per cent. per annum shall be made repayable with interest at the rate aforesaid by equal yearly or half-yearly instalments within a period expiring on the thirty-first day of March nineteen hundred and twenty-six, and such an agreement shall have effect accordingly, notwithstanding anything contained in any Act, order, or sanction relating to the lending or borrowing of such loans, or any of them."

Provisions as to Management and Sites of Provided Schools.

2.—(1.) Every public elementary school provided by the Local Education Authority within the area of any metropolitan borough shall have a body of managers. The number of those managers and the manner in which schools, in cases where it is desirable, should be grouped under one body of managers shall be determined by the council of each borough, after consultation with the Local Education Authority, and subject to the approval of the Board of Education.

Two-thirds of every such body shall be appointed by the borough council and one-third by the Local Education Authority; but due regard shall be had in selecting managers to the inclusion of women in the proportion of not less than one-third of the whole body of managers, and, in the case of the first body of managers, also of members chosen from the then existing bodies of managers, and the borough council and the Local Education Authority shall carry out any directions given by the Board of Education for the purpose of giving effect to this provision. (1)

(2.) The site of any new public elementary school to be provided by the Local Education Authority shall not be determined upon until after consultation with the council of the metropolitan borough in which the proposed site is situated, and in the case of compulsory purchase, if the council of the metropolitan borough does not concur in the proposed compulsory acquisition, the Board of Education shall not make the order authorising the purchase unless they are satisfied that the concurrence of the council of the borough should be dispensed with: Provided that, except in the case of compulsory acquisition, the site required for the enlargement of a public elementary school shall not be deemed to be a site required for a new public elementary school within the meaning of this sub-section. (2)

(3.) Schools provided by the Local Education Authority for blind, deaf, epileptic, and defective children, and any other schools which, in the opinion of the Board of Education, are not of a local character, shall not be treated for the purposes of this section as public elementary schools. (3)

Note 2.—(1.) The Local Education Authority is the London County Council. As to the management of certain schools not of a local chacter, see note (3) below. As to the appointment of managers, see sec. 6 (2) of the Act of 1902, and sec. 2 (1) of this Act; also para. 11 of the first Schedule to this Act.

(2.) The procedure for acquiring land compulsorily will be found in sec. 34 of the Education Act, 1918, p. 395; and Appendix, p. 575.

Land may be purchased by agreement for enlarging a public elementary school in London without complying with the requirements of sub-sec. (2) of the above section. But if the enlargement is, in the opinion of the Board of Education, such as to amount to the provision

of a new school that enlargement must, according to the requirement of sec. 8 (2) of the Education Act, 1902, be so treated for the purposes of that section, see p. 157. As to the provision of new schools generally, see sec. 8 of the Act of 1902, which, subject to the above provision is made applicable to London by sec. 1 of this Act.

(3.) As to the provision of schools for blind and deaf children, see sec. 2 of the Elementary Education (Blind and Deaf Children) Act, 1893, p. 446; and for defective and epileptic children, see the Elementary Education (Defective and Epileptic Children) Act, 1899, s. 2, p. 460.

As to the schools in London which are not of a local character, see sec. 32 of the Education Act, 1918. That section provides:—

(*a*) That notwithstanding the provisions of sec. 2 (1) of the Education (London) Act, 1903, as to the appointment of managers, any public elementary school which in the opinion of the Board of Education is organised for the sole purpose of giving advanced instruction to older children may be managed in such manner as may be approved by the Local Education Authority, and, in the case of a school not provided by that authority, also by the managers of the school;

(*b*) Notwithstanding anything in sec. 2 of the Education (London) Act, 1903, the provision of premises for classes in practical or advanced instruction for children attending from more than one public elementary school shall not be deemed to be the provision of a new public elementary school, and any class conducted in such premises may be managed in such manner as may be approved by the Local Education Authority.

Boundary Schools.

3.—(1.) As from the passing of this Act, any public elementary school provided by the London School Board before the passing of this Act, which is wholly or partly situated outside the county of London, shall, for the purposes of this Act, be treated as, and for the purposes of the principal Act be deemed to have been, wholly situated within the county of London and within the nearest metropolitan borough. (1)

(2.) Any public elementary school provided by the Local Education Authority which is situated partly in one metropolitan borough and partly in another shall, for the purposes of this Act, be deemed to be situated in such one of those boroughs as the Local Education Authority determine. (2)

Note 3.—(1.) This Act was passed on the 14th August, 1903.

One of the duties of the Local Education Authority under the principal Act, *i.e.* the Education Act, 1902, is to maintain and keep efficient all public elementary schools within their area which are necessary (sec. 7). The above section brings within the area of the London County Council, for the purposes of maintenance, etc., all public elementary schools provided by the London School Board which were situated wholly or partly outside the area of the county: and for the purpose of appointing managers (sec. 2 (1) above) it brings any such school within the metropolitan borough which is nearest to it.

(2.) The provision in sub-sec. (2) is important in connection with the choice of the body of managers of the school and possibly the grouping of the school for management purposes with some other school. The council of the metropolitan borough in which such a school is situated is entitled to choose two-thirds of the managing body and to determine, after consulting with the Local Education Authority, the grouping of any such school (see sec. 2 (1) above).

Modification of Principal Act and Interpretation.

4.—(1.) The modifications of the principal Act set out in the First Schedule to this Act shall have effect for the purposes of this Act.

(2.) The expression "metropolitan borough" in this Act shall include the City, and the expression "council of a metropolitan borough" shall include the mayor, aldermen, and commons of the city of London in common council assembled.

Commencement, Repeal, and Short Title.

5.—(1.) This Act shall, except as expressly provided, come into operation on the appointed day, and the appointed day shall be the first day of May nineteen hundred and four, or such other day, not being more than twelve months later, as the Board of Education may appoint, and different days may be appointed for different purposes and for different provisions of this Act.

(2.) In addition to the repeals effected by the principal Act, the Acts mentioned in the Second Schedule to this Act shall be repealed to the extent specified in the third column of that Schedule.

(3.) This Act may be cited as the Education (London) Act, 1903; and the Education Acts, 1870 to 1902, and this Act may be cited as the Education Acts, 1870 to 1903.

Note 5.—The London County Council took over its responsibilities for all purposes on the 1st May, 1904, except certain minor provisions, for which the appointed day was the 1st October, 1904.

As to the construction of the Education Acts, 1870 to 1918, which include the Education Acts, 1870 to 1903, so far as they are unrepealed, see the note to sec. 52 of the Education Act, 1918, p. 437.

SCHEDULES.

FIRST SCHEDULE.

Modifications of the Principal Act.

1. References in the principal Act to the council of a borough shall not be construed as references to the council of a metropolitan borough, except—

(*a*) in paragraph (*a*) of section twenty (relating to arrangements between councils) and in sub-section two of section twenty-four (relating to interpretation); and

(*b*) as respects the borough of Woolwich, so far as is necessary to enable the council of that borough to make any contribution which they are authorised to make under section nineteen of the London Government Act, 1899.

2. . . .

3. Sub-section one of section six of the principal Act (relating to the management of schools), and so much of section twelve of that Act (relating to the grouping of schools under one management) as relates to public elementary schools provided by the Local Education Authority, shall not apply.

4. The provisoes to sub-section one of section eighteen of the principal Act (relating to expenses), and sub-section two of section thirteen of that Act (relating to endowments), shall not apply, but the Board of Education may, on the application of the Trustees of the endowment, or of the Local Education Authority, direct that any money which would be payable under the said section thirteen to the county council shall be applied in manner provided by a scheme made by the Board if the Board consider that it is expedient to make such a scheme. In any such scheme, due regard shall primarily be had to the interests of the locality for which the benefits of the endowment were intended.

5. The words "a county council" in section nineteen of the principal Act (which relates to borrowing) shall, as respects borrowing by the Local Education Authority, be construed as if they were "the London County Council."

Note 5.—The effect of this provision is to give to the London County Council the power to borrow money for the purposes of the Elementary Education Act, 1870 to 1900, and the Education Act, 1902, as applied by this Act.

6. Section twenty-seven of the principal Act (relating to extent, commencement, and short title) shall not apply except so far as sub-section three of that section is already applicable to London, and the words "the appointed day" shall be substituted for "the twenty-sixth day of March nineteen hundred and four" in that sub-section.

Note 6.—Sub-sec. 3 of sec. 27 of the Act of 1902, in its application to London, merely empowered the London School Board to carry on the work of the schools and classes to which the Education Act, 1901, as renewed by the Education (Renewal) Act, 1902, applied, up to the 26th March, 1904. The schools and classes referred to were the Day and Evening Science and Art Classes and Classes and Schools of Science which were maintained by the London School Board until it was decided by the Court of Appeal that it was not within the powers of that Board as a statutory corporation to carry on these schools and classes, either in the day schools or in evening continuation classes, out of the school board rate or school fund (*R.* v. *Cockerton* (1901) 1 K. B. 726). In order to avoid the difficulty of discontinuing those schools and classes all at once, the Education Act, 1901, and the Renewal Act of 1902 were passed, but became spent as respects London when the Education (London) Act, 1903, applied to London the Education Act, 1902. Para. 6 of this Schedule varied the date, substituting the appointed day under the Act of 1903 for the 26th March, 1904; and under the Act of 1902, as applied by this Act, the London County Council, as the Local Education Authority under Part II. have the necessary powers for carrying on the schools and classes in question, as part of their system of higher education.

7. . . . .

8. The Treasury shall be substituted for the Local Government Board in paragraph six of the Second Schedule to the principal Act.

Note 8.—The London County Council advanced money to the London School Board for education purposes in London. Para. 6 of the Second Schedule to the Act of 1902, as amended by para. 8 above and applied by the Education (London) Act, 1903, enabled the Treasury to transfer to the London County Council outstanding liabilities with respect to those advances, and thus enable the Council to deal with them as part of their own debt for education purposes. As to this see sec. 3 of the Public Works Loans Act, 1905, set out in the note to sec. 1 of this Act above.

9. Where governors or managers are appointed by the Local Education Authority on the governing body of any institution aided by grant from the Local Education Authority, the provisions of the scheme or trust deed of the institution imposing any limit on the number of the members of the governing body, or requiring any qualification for those members, shall not apply as respects such governors or managers.

Note 9.—Governors or managers are sometimes nominated by the Local Education Authority to serve on the committees of management of educational institutions to which that authority make a grant in aid. If the trust deed of any such institution limits the qualification, or the number, of the governors or managers, the nominees of the Local Education Authority will serve in addition to the number so fixed by the trust deed and will not need to possess the qualification.

10. References in the principal Act to the passing of that Act shall be construed as references to the passing of this Act.

11. A manager of a public elementary school provided by the Local Education Authority shall not be appointed for a longer period than three years, but may be re-appointed.

Note 11.—See sec. 6 (2) of the Education Act, 1902, and sec. 2 (1) of this Act as to the appointment of managers.

SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	The definition of "metropolis" in section three. Sections thirty-seven, thirty-eight, and thirty-nine. Section fifty-eight. The third Part of the Second Schedule, and the Fifth Schedule.
36 & 37 Vict. c. 86.	The Elementary Education Act, 1873.	Section sixteen.
48 & 49 Vict. c. 38.	The School Boards Act, 1885.	Section two.

EMPLOYMENT OF CHILDREN ACT, 1903.

(3 Edw. VII., c. 45.)

An Act to make better Provision for Regulating the Employment of Children.

[14*th August*, 1903.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power to make Bye-laws for Regulating the Employment of Children.

1.—Any local authority may make bye-laws—

(i.) prescribing for all children, or for boys and girls separately, and with respect to all occupations or to any specified occupation,—

(*a*) the age below which employment is illegal ; and

(*b*) the hours between which employment is illegal ; and

(*c*) the number of daily and weekly hours beyond which employment is illegal :

(ii.) prohibiting absolutely or permitting, subject to conditions, the employment of children in any specified occupation.

Note 1.—For the definition of "local authority," see sec. 13. As to the confirmation of the bye-laws, see sec. 4. "Employment" is defined in sec. 13 : the definition is reproduced in sec. 48 (2) of the Education Act, 1918, see the cases cited in the note to the latter section.

In a case stated by justices of Middlesex at Wealdstone upon their dismissal of an information preferred by the appellant, an inspector, under a bye-law of the Middlesex County Council, made in pursuance of the Employment of Children Act, 1903, for that Hill, the respondent, did unlawfully employ a child liable to attend school full time (viz., between 8.30 a.m. and 5 p.m., on a day when the school was open) it was proved that the boy, Frank Thame, was 13½ years of age and liable to attend school full time ; that he was working between 8.30 a.m. and 5 p.m. on Friday, April 23, 1909 ; that the respondent was a baker, and Frank Thame was employed in delivering bread for P. Smurthwaite, a vanman in the employ of the respondent, to the respondent's customers : that he was actually engaged and his wages paid by Smurthwaite, for the latter's convenience and benefit. His engagement was a voluntary and gratuitous act on the part of Smurthwaite and formed no part of any arrangement between the respondent and Smurthwaite.

The inspector contended that the respondent had committed an offence under the bye-law and statute ; that he was the employer of Frank Thame ; that as no information had been laid by the respondent under sec. 6 (3) of the Act, he was under the Act and bye-law liable in

respect of the offence proved. The respondent contended that he was neither in fact nor in law the employer of Frank Thame. The justices upheld the respondent's contention, and the Court held that the justices had arrived at a proper conclusion on the facts that the boy was employed by Smurthwaite and not by the respondent; and that the respondent could not be called upon to lay an information under sec. 6 (3). (*Robinson* v. *Hill.* (1910), 1 K.B. 94; 7 L. G. R. 1065.)

By virtue of sec. 13 (1.) (iii.) of the Education Act, 1918, substituting new provisions in place of sec. 12 of this Act (q, v.), the bye-law making powers are vested in the Local Education Authority (except in the City of London), instead of in the local authority that formerly administered the provisions of this Act. See the new definition of "local authority" in sec. 13 of this Act.

For information as to the conditions in which children are employed, the results of the overstrain on the education of children, and the measures necessary for securing better control of juvenile employment, see the annual reports (especially those for 1916 and 1917), of the chief Medical Officer of the Board of Education. Reports from School Medical Officers and others are given on pages 148-150 of the report for 1916 and on pages 140-148 of the report for 1917.

On pages 148-155 of the latter there are also given three special reports by H.M's. Inspectors of Education, relating to the administration of bye-laws under the Employment of Children Act, 1903, in urban and rural areas and in London. Sir George Newman summarises, as follows, the conclusions to be drawn from these reports:—

(*a*) Only a partial use has been made by local authorities of their power to make bye-laws. Bye-laws when made differ widely in scope and stringency.

(*b*) The number of children under fourteen in employment is probably equivalent to not less than ten to twelve per cent. of the children between ten and fourteen years of age, and may be considerably greater.

(*c*) Even if no employment for less than twenty hours a week is regarded as excessive, the number of children in excessive employment is still very considerable.

(*d*) The employment of children, especially before school hours, is open to serious educational and physical objections.

(*e*) The effects of street trading, however carefully restricted, are demoralising.

(*f*) Generally speaking the local administration is far from satisfactory. There is no recognised standard and no common knowledge of the experience of other areas.

The above reports were made before the passing of the Education Act, 1918. They can be obtained from H.M's. Stationery Office, Kingsway, London, W.C. 2, price 1s. each.

Local Education Authorities should seek the assistance of the Home Office to enable them, under the additional powers conferred by the Act of 1918, to deal systematically with the employment of children and to make and enforce suitable bye-laws on the subject under the Employment of Children Act, 1903. The Law officers of the Crown have advised the Home Secretary that he has no power to approve a bye-law which prohibits altogether the employment on Sundays of children between the ages of 12 and 14.

Power to make Bye-laws for the Regulation of Street Trading by Person under Sixteen.

2. Any local authority may make bye-laws with respect to street trading by persons under the age of sixteen, and may by such bye-laws—

(*a*) prohibit such street trading, except subject to such conditions as to age, sex, or otherwise, as may be specified in the bye-law, or subject to the holding of a licence to trade to be granted by the local authority ;

(*b*) regulate the conditions on which such licences may be granted, suspended, and revoked ;

(*c*) determine the days and hours during which, and the places at which, such street trading may be carried on ;

(*d*) require such street traders to wear badges ;

(*e*) regulate generally the conduct of such street traders : Provided as follows :—

(1.) The grant of a licence or the right to trade shall not be made subject to any conditions having reference to the poverty or general bad character of the person applying for a licence or claiming to trade ;

(2.) The local authority, in making bye-laws under this section, shall have special regard to the desirability of preventing the employment of girls under sixteen in streets or public places.

Note 2.—The local authority is now the Local Education Authority except in the city of London, see secs. 12 and 13.

Street trading by children under fourteen is entirely prohibited. As to the meaning of "street trading," see sec. 13, page 246, and *Stratford Co-operative Society* v. *East Ham Corporation* (1915), 2 K.B. 70 ; 13 L. G. R. 285, where the members of the Court differed as to the meaning of the expression "street trading." The facts of the case were as follows :—The Stratford Co-operative and Industrial Society carried on (*inter alia*) the business of bakers at various places. They sent vans daily to the houses of their members each in charge of a vanman with a boy to assist in delivering goods. One of these boys (who was under sixteen), carrying a basket of bread from his van, called at a member's house and delivered two loaves which the member there and then ordered and paid for. The vanman and boy had their employer's authority to sell to non-members, if requested, but had never done so. The boy was not wearing any badge as was required by the bye-laws of the East Ham Corporation made under the Employment of Children Act, 1903, in the case of a boy under the age of sixteen employed in or carrying on street-trading. Upon an information against the Co-operative Society for a contravention of the bye-laws they were convicted but on appeal the conviction was quashed.

General Restrictions on Employment of Children.

3.—(1.) A child shall not be employed between the hours of nine in the evening and six in the morning : Provided that any local authority may, by bye-law, vary these hours either generally or for any specified occupation.

(2.) A child [under the age of eleven years] shall not be employed in street trading.

(3.) No child who is employed half-time under the Factory and Workshop Act, 1901, shall be employed in any other occupation.

(4.) A child shall not be employed to lift, carry, or move anything so heavy as to be likely to cause injury to the child.

(5.) A child shall not be employed in any occupation likely to be injurious to his life, limb, health, or education, regard being had to his physical condition.

(6.) If the local authority send to the employer of any child a certificate signed by a registered medical practitioner that the lifting, carrying, or moving of any specified weight is likely to cause injury to the child, or that any specified occupation is likely to be injurious to the life, limb, health, or education of the child, the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child.

Note 3.—Sec. 13 of the Education Act, 1918, provides as follows :—

The Employment of Children Act, 1903, so far as it relates to England and Wales, shall be amended as follows :—

(i.) For sub-section (1) of section three the following sub-section shall be substituted :—

"A child under the age of twelve shall not be employed ; and a child of the age of twelve or upwards shall not be employed on any Sunday for more than two hours, or on any day on which he is required to attend school before the close of school hours on that day, nor on any day before six o'clock in the morning or after eight o'clock in the evening :

"Provided that a local authority may make a bye-law permitting, with respect to such occupations as may be specified, and subject to such conditions as may be necessary to safeguard the interests of the children, the employment of children of the age of twelve or upwards before school hours and the employment of children by their parents, but so that any employment permitted by bye-laws on a school day before nine in the morning shall be limited to one hour, and that if a child is so employed before nine in the morning he shall not be employed for more than one hour in the afternoon."

(ii.) In sub-section (2) of section three, which prohibits the employment of a child under the age of eleven years in street trading, the words "under the age of eleven years" shall be repealed :

As to the meaning of the expression "a child of the age of twelve or upwards," see the note on p. 375.

Sec. 15 of the Education Act, 1918, provides as follows :—

(1.) The Local Education Authority, if they are satisfied by a report of the school medical officer or otherwise that any child is being employed in such a manner as to be prejudicial to his health or physical development, or to render him unfit to obtain the proper benefit from his education, may either prohibit, or attach such conditions as they think fit to, his employment in that or any other manner, notwithstanding that the employment may be authorised under the other provisions of this Act or any other enactment.

(2.) It shall be the duty of the employer and the parent of any child who is in employment, if required by the Local Education Authority, to furnish to the authority such information as to his employment as the authority may require, and, if the parent or employer fails to comply with any requirement of the Local

Education Authority or wilfully gives false information as to the employment, he shall be liable on summary conviction to a fine not exceeding forty shillings.

General Provisions as to Bye-laws.

4.—(1.) A bye-law made under this Act shall not have any effect until confirmed by the Secretary of State, and shall not be so confirmed until at least thirty days after the local authority have published it in such manner as the Secretary of State may by general or special order direct.

(2.) The Secretary of State shall, before confirming any bye-law, consider any objections to it which may be addressed to him by persons affected or likely to be affected thereby.

(3.) The Secretary of State may, before confirming any bye-law, order that a local inquiry be held with respect to the bye-law or with respect to any objections thereto. The person holding any such inquiry shall receive such remuneration as the Secretary of State may determine, and that remuneration and the expenses of the local inquiry shall be paid by the local authority making the bye-law.

(4.) Bye-laws made under this Act may apply either to the whole of the area of the local authority, or to any specified part thereof.

(5.) Bye-laws made by a County Council shall not be of any force or effect within any borough or urban district the council of which is constituted a Local Authority under this Act.

Note 4.—The power to make bye-laws is now vested in the Local Education Authority : see the note to sec. 1 above.

Offences and Penalties.

5.—(1.) If any person employs a child or other person under the age of sixteen in contravention of this Act, or of any bye-law under this Act, he shall be liable on summary conviction to a fine not exceeding forty shillings, or, in case of a second or subsequent offence, not exceeding five pounds.

(2.) If any parent or guardian of a child or other person under the age of sixteen has conduced to the commission of the alleged offence by wilful default, or by habitually neglecting to exercise due care, he shall be liable on summary conviction to the like fine.

(3.) If any person under the age of sixteen contravenes the provisions of any bye-law as to street trading made under this Act, he shall be liable on summary conviction to a fine not exceeding twenty shillings, and in case of a second or subsequent offence, if a child, to be sent to an industrial school, and, if not a child, to a fine not exceeding five pounds.

(4.) In lieu of ordering a child to be sent under this section

to an industrial school, a court of summary jurisdiction may order the child to be taken out of the charge or control of the person who actually has the charge or control of the child, and to be committed to the charge and control of some fit person who is willing to undertake the same until such child reaches the age of sixteen years: And the provisions of sections seven and eight of the Prevention of Cruelty to Children Act, 1894, shall, with the necessary modifications, apply to any order for the disposal of a child made under this sub-section.

Note 5.—Sec. 16 of the Education Act, 1918, provides as follows:—

If any person—

(*a*) employs a child in such a manner as to prevent the child from attending school according to the Education Acts and the bye-laws in force in the district in which the child resides; or

(*b*) having received notice of any prohibition or restriction as to the employment of a child issued by a Local Education Authority under this Act, employs a child in such a manner as to contravene the prohibition or restriction; or

(*c*) employs a young person in such a manner as to prevent the young person attending a continuation school which he is required to attend under this Act;

(*d*) employs a young person at any time when, in pursuance of any requirement under this Act issued by a Local Education Authority, the employment of that young person must be suspended;

he shall be deemed to have employed the child or young person in contravention of the Employment of Children Act, 1903, and sec. 5 (1) and (2), sec. 6 and sec. 8, of that Act shall apply accordingly as if they were herein re-enacted and in terms made applicable to children and young persons within the meaning of this Act as well as to children within the meaning of that Act.

Paras. (c) and (d) of sec. 16 have not yet come into operation. The rest of the section came into operation on the 8th August, 1918.

Children and young persons are defined for the purposes of the Education Act, 1918, in sec. 48 (1) of that Act.

As to the presumption of the age of a child for the purposes of this Act, and the Prevention of Cruelty to Children Act, 1904, see sec. 17 of the latter Act.

Secs. 7 and 8 of the Prevention of Cruelty to Children Act, 1894, related respectively to the maintenance of children when committed to the custody of any person under an order of the Court; and to the religious persuasion of the person to whom the child is committed. The Act of 1894 was repealed by the Prevention of Cruelty to Children Act, 1904, and secs. 7 and 8 of the latter Act replaced the two former sections. These have in turn been repealed by the Children Act, 1908, secs. 22 and 23 of which provide for the matters formerly dealt with in secs. 7 and 8 of the Act of 1894.

Offences by Agents or Workmen and by Parents.

6.—(1.) Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

(2.) Where a child is taken into employment in contravention of this Act on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

(3.) Where an employer is charged with any offence under this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the court is satisfied that the employer had used due diligence to comply with the provisions of the Act, and that the other person had committed the offence in question without the employer's knowledge, consent, or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any fine.

(4.) When it is made to appear to the satisfaction of an inspector or other officer charged with the enforcement of this Act, at the time of discovering the offence, that the employer had used all due diligence to enforce compliance with this Act, and also by what person the offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, and in contravention of his order, then the inspector or officer shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer.

Note 6.—(1.) See sec. 16 of the Education Act, 1918, set out in the note to sec. 5 above.

(3.) See *Robinson* v. *Hill*, noted under sec. 1 above.

Limitation of Time.

7. With respect to summary proceedings for offences and fines under this Act, and any bye-laws made thereunder, the information shall be laid within three months after the commission of the offence.

Power of Officer of Local Authority to Enter Place of Employment.

8. If it appear to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time, within forty-eight hours

from the date of the order, and examine such place and any person therein touching the employment of any child therein.

Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction to a penalty not exceeding twenty pounds.

Note 8.—See sec. 16 of the Education Act, 1918, set out in the note to sec. 5 above.

The local authority is now the Local Education Authority. See the new definition in sec. 13 of this Act.

Employment in Factories.

9. Bye-laws made under this Act shall not apply to any child above twelve employed in pursuance of the Factory and Workshop Act, 1901, or the Metalliferous Mines Regulation Act, 1872, or the Coal Mines Regulation Act, 1887, so far as regards that employment ; and in the application of section three to children employed under those Acts the inspectors appointed under those Acts shall be substituted for the local authority in respect of such employment.

Note 9.—Sec. 14 of the Education Act, 1918, enacts as follows :—

No child within the meaning of this Act shall be employed—(*a*) in any factory or workshop to which the Factory and Workshop Acts, 1901 to 1911, apply; or (*b*) in any mine to which the Coal Mines Act, 1911, applies ; or (*c*) in any mine or quarry to which the Metalliferous Mines Acts, 1872 and 1875, apply ; unless lawfully so employed on the appointed day ; and those Acts respectively shall have effect as respects England and Wales as if this provision, so far as it relates to the subject matter thereof, was incorporated therewith. As to the "appointed day," see sec. 52 of the Act of 1918. Sec. 14 of that Act has not yet come into operation (February, 1920).

Most of the Coal Mines Regulation Act, 1887, was repealed by the Coal Mines Act, 1911. Secs. 91-95 of the latter contain provisions as to the employment of children.

Saving for Industrial and other Schools.

10. Nothing in this Act or in any bye-law made thereunder shall apply to the exercise of manual labour by any child under order of detention in a certified industrial or reformatory school, or by any child while receiving instruction in manual labour in any school.

Sec. 13 (1) iii. of the Education Act, 1918, replaces sec. 12 and is printed here instead of sec. 12 as it originally stood :

12. "Except as regards the City of London the powers and duties of a local authority under this Act shall be deemed to be powers and duties under Part III. of the Education Act, 1902, and the provisions of the Education Acts for the time being in force with regard to those powers and duties and as to the manner in which the expenses of an authority under that Part of that Act shall be paid shall apply accordingly" :

Note 12.—As to the powers and dutes of Local Education Authorities under Part III. of the Education Act, 1902; see sec. 5 of that Act; and as to the payment of the expenses of the authorities in the exercise of those powers and the performance of those duties, see sec. 18 of that Act, and the notes thereto.

Definitions.

13. In this Act—

The expression "child" means a person under the age of fourteen years:

The expression "guardian," used in reference to a child, includes any person who is liable to maintain or has the actual custody of the child:

The expression "employ" and "employment," used in reference to a child, include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person:

The expression "local authority," means, in the case of the City of London, the mayor, aldermen, and commons of that city in common council assembled, and elsewhere the Local Education Authority for the purposes of Part III. of the Education Act, 1902.

The expression "street trading" includes the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoe-blacking, and any other like occupation carried on in streets or public places.

Note 13.—The definition of "local authority" here given is substituted by sec. 13 (1) (IV.) of the Act of 1918 for the definition previously enacted in this Act.

Compare the definition of "child" in sec. 48 of the Education Act, 1918. The definition of "employ" and "employment" in this Act has been followed in sec. 48 (2) of the Education Act, 1918 (p. 427).

As to "street trading" see the note to sec. 2 above.

By sec. 13 (2) (ix.) of the Education Act, 1918, it is enacted as follows:—

References to the Employment of Children Act, 1903, shall be construed as references to that Act as amended by this Act.

14. Application of the Act to Scotland— . . .

16. Application of the Act to Ireland— . . .

Commencement of Act.

17. This Act shall come into operation on the first day of January one thousand nine hundred and four.

Short Title.

18. This Act may be cited as the Employment of Children Act, 1903.

PREVENTION OF CRUELTY TO CHILDREN ACT, 1904.

(4 Edw. VII., c. 15.)

*An Act to Amend the Law relating to the Prevention of Cruelty to Children.**

[15*th August*, 1904.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Restrictions on Employment of Children.

2. If any person—

(*b*) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing, or being exhibited for profit, or offering anything for sale, between eight p.m. and six a.m. ; or

Note to (*b*).—8 p.m. was substituted for 9 p.m. so far as relates to children under fourteen years of age, by the Education Act, 1918, sec. 13 (2).

(*c*) causes or procures any child under the age of twelve years, or, having the custody, charge, or care of any such child, allows that child, to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing, or being exhibited for profit, or offering anything for sale ; or

Note to (*c*).—By sec. 13 (2) of the Education Act, 1918, twelve years is substituted for eleven years.

* Much of this Act was repealed by the Children Act, 1908. See sec. 12 of the Children Act, on p. 407, and notes thereon.

(*d*) causes or procures any child under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any place for the purpose of being trained as an acrobat, contortionist, or circus performer, or of being trained for any exhibition or performance which in its nature is dangerous,

that person shall, on summary conviction, be liable at the discretion of the court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months :

Provided that—

(i.) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school or to any charitable object, if such sale or entertainment is held elsewhere than in premises which are licensed for the sale of any intoxicating liquor but not licensed according to law for public entertainments, or if, in the case of a sale or entertainment held in any such premises as aforesaid, a special exemption from the provisions of this section has been granted in writing under the hands of two justices of the peace ; and

(ii.) Any local authority may, if they think it necessary or desirable so to do, from time to time by bye-law extend or restrict the hours mentioned in paragraph (*b*) of this section, either on every day or on any specified day or days of the week and either as to the whole of their district or as to any specified area therein ; and

(iii.) Paragraphs (*c*) and (*d*) of this section shall not apply in any case in respect of which a licence granted under this Act is in force, so far as that licence extends.

As to the meaning of local authority, see sec. 29.

Licences for Employment of Children. (3 *Edw.* 7, *c.* 45.)

3.—(1.) A [petty sessional court], or in Scotland the School Board, may, notwithstanding anything in this Act, or in the Employment of Children Act, 1903, or any bye-law made thereunder, grant a licence for such time and during such hours of the day and subject to such restrictions and conditions as the [court] or board think fit, for any child exceeding [ten] years of age—

(*a*) to take part in any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement as aforesaid ; or

(*b*) to be trained as aforesaid ; or
(*c*) for both purposes ;

if satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments or being trained as aforesaid, and the [court] or board may, upon sufficient cause, vary, add to, or rescind any such licence.

Any such licence shall be sufficient protection to all persons acting under or in accordance with the same.

(2.) It shall be the duty of inspectors and other officers charged with the execution of the Employment of Children Act, 1903, to see whether the restrictions and conditions of any licence under this section are duly complied with, and any such inspector or officer shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as an inspector appointed under the Factory and Workshop Act, 1901, has to enter, inspect, and examine a factory or workshop under section one hundred and nineteen of that Act, and that section shall apply accordingly.

(3.) . . .

(4.) . . .

(5.) Nothing in this or in the last preceding section shall affect the provisions of the Elementary Education Act, 1876, or the Education (Scotland) Act, 1878, as amended by any later enactment.

Note 3.—When sec. 13 (2) (iv.) of the Education Act, 1918, comes into operation (1st April, 1920), the Local Education Authority for the purposes of Part III. of the Education Act, 1902, will supersede the petty sessional court in the first line of sec. 3 (1), and sub-secs. (3) and (4) of the Act of 1904 will cease to apply with respect to licences to take part in entertainments, their provisions being replaced by sub-secs. iv. to viii. of sec. 13 (2) of the Education Act, 1918 (see below). Rules made under these sub-sections will be found in the Appendix at p. 614. See also the circular (No. 1147) issued with the Rules on the 20th January, 1920, on p. 620. On the 8th of August, 1921, when sec. 13 (iii.) of the Education Act, 1918, will come into operation, the word "twelve" will be substituted for the word "ten" in the seventh line of section 3.

Sec. 13 (2) of the Education Act, 1918, p. 373, provides as follows :—

The Prevention of Cruelty to Children Act, 1904, so far as it relates to England and Wales, shall be amended as follows :—

(i.) In sec. 2 (*b*) which restricts the employment of boys under the age of fourteen years and of girls under the age of sixteen years for the purpose of singing, playing or performing, or being exhibited for profit or offering anything for sale, between nine p.m. and six a.m., "eight p.m." shall be substituted for "nine p.m." so far as relates to children under fourteen years of age :

(ii.) In sec. 2 (*c*), which restricts the employment of children under eleven years for the purpose of singing, playing or performing, or being exhibited for profit, or offering anything for sale, twelve years shall be substituted for eleven years :

(iii.) In sec. 3, which relates to licences for the employment of children exceeding ten years of age, the age of twelve years shall be substituted for the age of ten years :

(iv.) A licence under sec. 3 to take part in any entertainment or series of entertainments, instead of being granted, varied, added to, or rescinded as provided by that section, shall be granted by the Local Education Authority for the purposes of Part III. of the Education Act, 1902, of the area in which the child resides, subject to such restrictions and conditions as are prescribed by rules made by the Board of Education, and may be rescinded by the authority of any area in which it takes effect or is about to take effect if the restrictions and conditions of the licence are not observed, and, subject as aforesaid, may be varied or added to by that authority at the request of the holder of the licence :

(v.) The holder of a licence shall at least seven days before a child takes part in any entertainment or series of entertainments furnish the Local Education Authority of the area in which the entertainment is to take place with particulars of the licence and such other information as the Board of Education may by rules prescribe, and if he fails to furnish such particulars and information as aforesaid he shall be liable on summary conviction to a fine not exceeding five pounds :

(vi.) Sec. 3 (3) and (4) shall cease to apply with respect to licences to take part in an entertainment or series of entertainments :

(vii.) If the applicant for a licence or a person to whom a licence has been granted feels aggrieved by any decision of a Local Education Authority, he may appeal to the Board of Education, who may thereupon exercise any of the powers conferred on a Local Education Authority by this section :

(viii.) The provisions of this sub-section shall not apply to any licence in force on the appointed day.

(ix). References to the Employment of Children Act, 1903, shall be construed as references to that Act, as amended by this Act.

Arrest of Offender and Provision for Safety of Children.

Power to take Offenders into Custody.

4.—(1.) Any constable may take into custody, without warrant, any person—

(*a*) who within view of such constable commits an offence under this Act, . . . where the name and residence of such person are unknown to such constable and cannot be ascertained by such constable :

(2.) Where a constable arrests any person without warrant in pursuance of this section, the inspector or constable in charge of the station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been

committed, release the person arrested on his entering into such a recognizance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

Evidence and Procedure.

Evidence of Accused Person.

12. In any proceeding against any person for an offence under this Act, such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

Evidence of Child of Tender Years.

15.—(1.) Where, in any proceeding against any person for an offence under this Act, . . . the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth ; and the evidence of such child, though not given on oath, but otherwise taken and reduced into writing in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848, or of section fourteen of the Petty Sessions (Ireland) Act, 1851, or of section thirteen of this Act, shall be deemed to be a deposition within the meaning of those sections respectively :

Provided that—

(*a*) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused ; and

(*b*) Any child whose evidence is received as aforesaid and who shall wilfully give false evidence shall be liable to be indicted and tried for such offence, and on conviction thereof may be adjudged such punishment as is provided for by section eleven of the Summary Jurisdiction Act, 1879, in the case of juvenile offenders, or in Ireland by section four of the Summary Jurisdiction over Children (Ireland) Act, 1884, in the case of children.

(2.) This section shall not apply to Scotland.

Presumption of Age of Child.

17. Where a person is charged with an offence under this Act, . . . or any offence under the Employment of Children Act, 1903, in respect of a child who is alleged in the charge or indictment to be under any specified age, and the child appears to the court to be under that age, such child shall for the purposes of this Act, and the Employment of Children Act, 1903, be deemed to be under that age, unless the contrary is proved.

Mode of Charging Offences and Limitation of Time.

18.—(1.) Where a person is charged with committing an offence under this Act . . . in respect of two or more children, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty for each child unless upon separate informations.

(2.) The same information or summons may also charge any person as having the custody, charge, or care, alternatively or together, . . .

(3.) A person shall not be summarily convicted of an offence under this Act, . . . unless the offence was wholly or partly committed within six months before the information was laid; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

(4) When an offence under this Act, . . . charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

Appeal from Summary Conviction to Quarter Sessions.

19. When, in pursuance of this Act, any person is convicted by a court of summary jurisdiction of an offence, and such person did not plead guilty or admit the truth of the information, . . . he may appeal against such a conviction in England and Ireland to a court of quarter sessions, and in Scotland to the High Court of Justiciary in manner provided by the Summary Prosecutions Appeals (Scotland) Act, 1875, or any Act amending the same.

SUPPLEMENTAL.

Provision as to Bye-laws.

22. Every bye-law under this Act shall be made by the same authority and confirmed in the same way as bye-laws

under the Employment of Children Act, 1903, or in Scotland as bye-laws under section two of the said Act.

Note 22.—Bye-laws under the Employment of Children Act, 1903, are made by the Local Education Authority : see p. 238.

Provision as to Parents and as to Meaning of "Custody, Charge, or Care."

23.—(1.) The provisions of this Act relating to the parent of a child shall apply to the step-parent of the child and to any person cohabiting with the parent of the child, and the expression "parent," when used in relation to a child, includes guardian and every person who is by law liable to maintain the child.

(2.) . . . .

(3.) For the purposes of this Act—

Any person who is the parent of a child shall be presumed to have the custody of the child : and

Any person to whose charge a child is committed by its parent shall be presumed to have charge of the child ; and

Any other person having actual possession or control of a child shall be presumed to have the care of the child.

Evidence of Wages of Defendant.

24. In any proceedings under this Act a copy of an entry in the wages book of any employer of labour, or, if no wages book be kept, a written statement signed by such employer, or by his foreman, shall be primâ facie evidence that the wages therein entered, or stated as having been paid to any person have in fact been so paid : Provided that such copy or statement has been signed by such employer, or his foreman, and that the signature of such employer, or foreman, has been witnessed by the person producing the said copy or statement.

Extension of Time for Proceedings.

27. The limit of time mentioned in the second proviso of section five of the Criminal Law Amendment Act, 1885, shall be six months after the commission of the offence.

General Definitions.

29. In this Act, unless the context otherwise requires

The expression "local authority" has the same meaning as in the Employment of Children Act, 1903 :

The expression "chief officer of police" means—

in the city of London and the liberties thereof, the commissioner of city police ;

in the metropolitan police district, the commissioner of police of the metropolis;

elsewhere in England, the chief constable, or head constable or other officer, by whatever name called, having the chief local command of the police in the police district in reference to which such expression occurs:

Note 29.—By sec. 13 (1) (iv.) of the Education Act, 1918, the following definition of "local authority" was substituted for the definition contained in The Employment of Children Act, 1903, so far as it relates to England and Wales,—

The expression "local authority" means in the case of the City of London the mayor, aldermen, and commons of that city in common council assembled and elsewhere the Local Education Authority for the purposes of Part III. of the Education Act, 1902.

30. Application of the Act to Scotland, . . .

31. Application of the Act to Ireland, . . .

Expenses of Local Authority.

32. Expenses incurred by a local authority under this Act shall be defrayed in like manner as expenses incurred under the Employment of Children Act, 1903.

Note 32.—As to expenses see sec. 12 of that Act, and sec. 18 of the Education Act, 1902.

Short Title and Commencement of Act.

33.—(1.) This Act may be cited as the Prevention of Cruelty to Children Act, 1904.

(2.) The enactments mentioned in the Second Schedule to this Act shall be repealed from the date of the commencement of this Act to the extent specified in the third column to that Schedule.

(3.) This Act shall come into operation on the first day of October one thousand nine hundred and four.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
57 & 58 Vict. c. 41.	The Prevention of Cruelty to Children Act, 1894.	The whole Act.
3 Edw. 7, c. 45.	The Employment of Children Act, 1903.	In section four the subsection numbered (6). Section eleven.

EDUCATION (LOCAL AUTHORITY DEFAULT) ACT, 1904.

(4 Edw. VII., c. 18.)

An Act to make provision for the case of default on the part of Local Authorities in the performance of their duties as respects elementary Schools.

[15*th August*, 1904.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Powers of Board of Education on Default of Local Education Authority.

1.—(1.) The Board of Education, without prejudice to their right to take any other proceedings, may, if they are satisfied that it is expedient to do so on account of any default of a local authority in the performance of their duties as respects any elementary school,—

(*a*) make orders for recognising as managers of that school any persons who are acting as managers thereof, and for rendering valid any act, thing, payment, or grant which in the opinion of the Board might otherwise be invalid by reason of the default of the authority, and every such order shall have effect accordingly ; and

(*b*) if it appears to the Board that the managers of that school have, for the purpose of maintaining and keeping efficient the school, incurred any expenses for which provision should have been made by the Local Education Authority, pay to the managers such amount in respect of these expenses as in the opinion of the Board was properly incurred.

(2.) Any sums paid by the Board of Education under this Act shall be a debt due to the Crown from the Local Education Authority, and, without prejudice to any other remedy, may be deducted from any sums payable to that authority on account of parliamentary grants.

(3.) Any order or payment may be made under this Act as respects matters occurring whether before or after the passing thereof.

Note 1.—The Board of Education were empowered under various sections of the Elementary Education Acts to declare a school board in default for certain failures and omissions. That remedy could not be easily applied to county councils and to the councils of boroughs and urban districts which superseded school boards under the Education Act, 1902. Accordingly, those remedial sections were repealed and sec. 16 of the Education Act, 1902, was enacted to replace them. That section enables the Board of Education, after holding a public inquiry, to make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and to enforce their order by *mandamus*. See sec. 16 on p. 165, and the note thereon. The remedy by *mandamus*, however, is long, expensive and uncertain. A more expeditious remedy was given by the legislature in the present Act; and a still more summary remedy is given by sec. 44 (5) of the Education Act, 1918, p. 414.

It is still open to the Board of Education to proceed by obtaining a rule *nisi* for a *mandamus* in any case in which they think that remedy desirable.

Apart from the very convenient mode of procedure indicated in the section, the ordinary and somewhat expensive procedure for recovering Crown debts which are not of record is by information at the suit of the Attorney-General on the Revenue side of the King's Bench Division: see *Robertson on "Civil Proceedings by and against the Crown,"* p. 142, and *Halsbury's "Laws of England,"* Vol. 10, p. 4.

Construction and Short Title. (2 *Edw.* VII., *c.* 42.)

2. This Act shall be construed as one with the Education Act, 1902, and may be cited as the Education (Local Authority Default) Act, 1904.

Note 2.—As to the effect of directing that one Act shall be construed as one with another Act, see the note to sec. 52 of the Education Act, 1918.

EDUCATION (PROVISION OF MEALS) ACT, 1906.*

(6 Edw. VII., c. 57.)

An Act to make Provision for Meals for Children attending Public Elementary Schools in England and Wales.

[21*st December*, 1906.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power of Local Education Authority to aid School Canteen Committees in the Provision of Meals for Children.

1. A Local Education Authority under Part III. of the Education Act, 1902, may take such steps as they think fit for the provision of meals for children in attendance at any public elementary school in their area, and for that purpose—

(*a*) may associate with themselves any committee on which the authority are represented, who will undertake to provide food for those children (in this Act called a "school canteen committee") ; and

(*b*) may aid that committee by furnishing such land, buildings, furniture, and apparatus, and such officers and servants as may be necessary for the organisation, preparation, and service of such meals ;

but, save as herein-after provided, the authority shall not incur any expense in respect of the purchase of food to be supplied at such meals.

Note 1.—The administration of this Act should be placed under the general direction of the School Medical Officer. The following extract is taken from a report laid before Parliament by the Board of Education, on the working of this Act for the year ending 31st March, 1910. The work of providing meals for children attending public elementary schools is regarded by the Board of Education as intimately connected with the work of medical inspection. Unless it is conducted as a branch of the school medical service, it may degenerate into a system of doles and be administered in a haphazard fashion on merely eleemosynary and sentimental lines. The Board are of opinion that by administering the Act as part of that service and by the scientific organisation of the work with due regard to medical and

* See also the Education (Provision of Meals) Act, 1914, p. 345, which amends this Act.

educational considerations, wasteful and reckless expenditure can be prevented and full value, in the form of increased vigour and more effective education, may be obtained for the expenditure of the authority. Even if the School Medical Officer cannot examine personally all children recommended for meals, he can take a large part in the selection, and by concentrating on those cases which are doubtful and those in which actual neglect is suspected, he can do a great deal towards the establishment of a proper standard. He can give valuable advice in the choice of food and test the results of different dietaries. If he visits the kitchens and the dining centres from time to time, he can see that satisfactory methods are adopted, and ensure, for instance, that especial attention is given to the more delicate children, and to those whom it is difficult to induce to eat the food provided. He will also have an opportunity of judging the extent to which individual children are benefited by the meals, and of testing it by periodical examination, weighing, and so forth; and having discovered the main cause or causes of malnutrition, he will be able to advise on the machinery which should be put in action to secure a remedy. This part of the work may form an important branch of the arrangements for "following up," in connection with the work of medical inspection and treatment.

As regards medical inspection and treatment of school children, see sec. 13 of the Education (Administrative Provisions) Act, 1907 (p. 271); and sec. 2 (1) (*b*) of the Education Act, 1918 (p. 347).

In the annual report for 1917 of the Chief Medical Officer of the Board of Education it is stated that the Provision of Meals Act has been applied in greater or less degree during the ten years 1908-1917, in 150 educational areas (out of 318), comprising a population of three and a half million school children. In some of those areas its provisions are always in operation. In 1917-1918 the number of children fed during the year was 60,582, and six and a half millions of meals were supplied at an average cost of 5.33 pence per meal. Broadly speaking one half of the whole school feeding of children takes place in London.

The provision at the end of sec. 1 must now be read in connection with sec. 1 of the Education (Provision of Meals) Act, 1914, which amends sec. 3 of this Act: see the note to that section below.

Grants are paid by the Board of Education to Local Education Authorities in respect of the provision of meals for children attending public elementary schools; see p. 415 and footnote thereto.

On the 15th August, 1914, the Board of Education issued a memorandum, "Circular 865," on "the methods of providing meals for children in connection with public elementary schools and on dietaries suitable for the present circumstances." This memorandum can be obtained from H.M's. Stationery Office, Imperial House, Kingsway, London, W.C. 2.

Since the 7th August, 1914, meals may be provided under this Act for children attending the public elementary school, both on days when the school meets and on other days. They may therefore be provided during the school holidays, but the children receiving the meals must be children who attend the school when it is open.

Sec. 2 of the Education (Provision of Meals) Act, 1914, provides as follows:—"The powers of a Local Education Authority under the Education (Provision of Meals) Act, 1906, as amended by this Act, shall be exerciseable in respect of children attending a public elementary school within their area, both on days when the school meets and on other days."

The District Auditor, in auditing the accounts of the London County Council, ruled that such items as fruit, cod-liver oil, and extract of malt were not food within the scope of the Education (Provision of

Meals) Act, and the Finance Committee of the Council communicated with the auditor with reference to this matter. The auditor subsequently agreed that fruit might be regarded as a proper constituent of a meal given to necessitous children under the Act, but as regards cod-liver oil and extract of malt, he intimated that he was opposed to expenditure for such purposes under the Act. He added, however, that, provided such expenditure was kept within its present moderate limit, he would not take any action in the matter. He stipulated, however, that this expression of his intentions must not be held to commit him in any way in the event of his being called upon to decide the question on any future occasion. The contention of the Council was that fruit was provided not as a luxury, but as an essential constituent of the meal. With regard to cod-liver oil, the Education Committee admitted that this was not strictly justifiable under the Act, but it had been represented to the Committee by the medical officer that physiologically and medically it must be regarded as a food, although it is not commonly used, and is only prescribed in special cases of disease, debility or malnutrition, and as an aid to curative treatment. In the result the Committee decided to supply poor children with milk in lieu of cod-liver oil. (*Local Government Chronicle*, 23rd March, 1912.)

Recovery of the Cost of Meals.

2.—(1.) There shall be charged to the parent of every child in respect of every meal furnished to that child under this Act such an amount as may be determined by the Local Education Authority, and, in the event of payment not being made by the parent, it shall be the duty of the authority, unless they are satisfied that the parent is unable by reason of circumstances other than his own default to pay the amount, to require the payment of that amount from that parent, and any such amount may be recovered summarily as a civil debt.

(2.) The Local Education Authority shall pay over to the school canteen committee so much of any money paid to them by, or recovered from, any parent as may be determined by the authority to represent the cost of the food furnished by the committee to the child of that parent, less a resasonable deduction in respect to the expenses of recovering the same.

Note 2.—In August, 1917, the London Education Committee decided (*a*) that the charge made to non-necessitous children in London receiving school meals under the Acts of 1906 and 1914 should be the average cost of the meals, excluding the cost of service, such cost to be calculated each school term; (*b*) that in connection with any proceedings which may be taken under sec. 2 (1) of this Act the amount to be recovered from the parent should be the cost for the time being which has been fixed for non-necessitous children; provided that a school care committee may remit the amount in whole or in part. (Report for 1917 of the Chief Medical Officer, Board of Education, p. 128.)

In 1917-18 the average cost per. meal for food only was 3.33 pence. The total expenditure in the same period was £144,409 being £90, 113 on food and £54,295 on other matters connected with the service. The amount recovered from parents was £16,610. The amount granted for this service from the Exchequer is not stated for 1917-18; but the amount so granted for the previous year was £57,501 (*ibid.*, p. 129.)

Power of Local Education Authority to Defray the Cost of Food in Certain Cases.

3. Where the Local Education Authority resolve that any of the children attending an elementary school within their area are unable by reason of lack of food to take full advantage of the education provided for them, and have ascertained that funds other than public funds are not available or are insufficient in amount to defray the cost of food furnished in meals under this Act, they may *apply to the Board of Education, and that Board may authorise them to* spend out of the rates such sum as will meet the cost of the provision of such food, *provided that the total amount expended by a Local Education Authority for the purposes of this section in any local financial year shall not exceed the amount which would be produced by a rate of one halfpenny in the pound over the area of the authority, or, where the authority is a county council (other than the London County Council), over the area of the parish or parishes which in the opinion of the council are served by the school.*

Note 3.—By sec. 1 of the Education (Provision of Meals) Act, 1914, a local authority may, without any application to the Board of Education, spend out of the rates such sums as may be necessary to meet the cost of the provision of food under sec. 3 of this Act, p. 345; and accordingly the words in italics in sec. 3 above were repealed.

Provisions as to Disfranchisement.

4. The provision of any meal under this Act to a child and the failure on the part of the parent to pay any amount demanded under this Act in respect of a meal shall not deprive the parent of any franchise, right, or privilege, or subject him to any disability.

Note 4.—This section was mainly intended to prevent the provision of meals for children from being regarded as the giving of alms which might deprive their parents of the electoral franchise. The object of the section, so far as that intention is concerned, is further secured by sec. 9 (1) of the Representation of the People Act, 1918, which provides that a person shall not be disqualified from being registered or from voting as a parliamentary or local government elector by reason that he or some person for whose maintenance he is responsible has received poor relief or other alms.

Application of Education Acts.

5.—(1.) The powers of a Local Education Authority under this Act shall be deemed to be powers of that authority under the Education Acts, 1870 to 1903, and the provisions of those Acts as to the manner in which the expenses of a Local Education Authority are to be charged and defrayed, and as to borrowing, and as to the manner in which the amount which would be produced by any rate in the pound is to be

estimated, shall apply to expenses incurred and money borrowed under this Act, and to the estimate of the produce of any rate in the pound for the purposes of this Act.

(2.) Any expression to which a special meaning is attached in the Education Acts, 1870 to 1903, shall have the same meaning in this Act, except that for the purposes of this Act the expression "child" shall, notwithstanding anything in section forty-eight of the Elementary Education Act, 1876, include any child in attendance at a public elementary school.

Note 5.—As to the expenses of Local Education Authorities under the Education Acts, see sec. 18 of the Education Act, 1902 (p. 181), and the notes thereto.

As to borrowing, see sec. 19 of the Act of 1902, and the notes thereto.

The provision in sec. 5, as to the manner in which the amount which would be produced by any rate in the pound is to be estimated, is of little importance now that the proviso to sec. 3, above, is repealed. Provision for making the estimate is contained in sec. 23 (4) of the Education Act, 1902, and the regulations made thereunder: see the note to that section on p. 208.

In the Index, under the heading "Interpretation of Terms," will be found a list of the words to which a special meaning has been attached in the Acts contained in this volume.

Provision as to Teachers.

6. No teacher seeking employment or employed in a public elementary school shall be required as part of his duties to supervise or assist, or to abstain from supervising or assisting, in the provision of meals, or in the collection of the cost thereof.

Extent of Act.

7. This Act shall not apply to Scotland.

Short Title.

8. This Act may be cited as the Education (Provision of Meals) Act, 1906.

Note 8.—See also the Education (Provision of Meals) Act, 1914, p. 345, which amends this Act.

EDUCATION (ADMINISTRATIVE PROVISIONS) ACT, 1907.

(7 Edw. VII., c. 43.)

An Act to make Provision for the better Administration by the Central and Local Authorities in England and Wales of the Enactments relating to Education.

[28*th August*, 1907.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Purchase and Appropriation of Land.

1.—(1.) A Local Education Authority shall have the same power, exerciseable in the same manner, and subject to the same provisions, for the purchase of land either compulsorily or by agreement for the purposes of Part II. of the Education Act, 1902, as they have under the Education Acts for the purposes of Part III. of that Act, but the powers given by this section shall be in addition to and not in derogation of any other powers for the purpose possessed by the authority. (1)

(2.) A Local Education Authority may—(2)

(i.) appropriate, with the consent of the Board of Education, for the purpose of Part II. of the Education Act, 1902, any land acquired by them for the purposes of Part III. of the Education Act, 1902, or taken over by them under that Act as successors of a school board ; and

(ii.) appropriate, with the consent of the Board of Education, for the purposes of Part III. of the Education Act, 1902, any land acquired by them for the purpose of Part II. of the Education Act, 1902, either under that Act, or for similar purposes under any Act repealed by that Act ; and

(iii.) appropriate, with the consent of and after inquiry by the Local Government Board, for any of the purposes of the Education Acts, any land acquired by them otherwise than in their capacity as Local Education Authority ;

(3.) The council of a non-county borough or urban district may appropriate, with the consent of and after inquiry by the Local Government Board, for the purpose of their power to

supply or aid the supply of education other than elementary, any land acquired by them under any other power.

(4.) The appropriation of land by a Local Education Authority or a council under this section shall be subject in any case to any special covenants or agreements affecting the use of the land in their hands.

(5.) Where the capital expenditure in connection with any land appropriated under this section or any loan for the purpose of repaying that expenditure or any part of that expenditure or loan has been, or is charged on, or raised within, any special part of the area of the Local Education Authority or council, and the Board of Education or, in the case of land appropriated under this section and not acquired for any of the purposes of the Education Acts, the Local Government Board, are of opinion that the use of the land for the purposes for which it is appropriated will alter the area benefited by the expenditure, the Board of Education, or the Local Government Board, as the case requires, shall order such equitable adjustment in respect thereof to be made as they think right under the circumstances, and the Local Education Authority or council shall comply with any order so made.

(6.) A council shall have power, with the consent of and after inquiry by the Board of Education, to alienate any land acquired or held by them for the purposes of education other than elementary under Part II. of the Education Act, 1902, and, in the case of the sale of any such land, the proceeds of sale shall be applied in such manner as the Local Government Board sanction, towards the discharge of any loan of the council under the Education Acts, or otherwise for any purpose for which capital may be applied by the council under those Acts.

Note 1.—(1.) As to the power of purchasing lands by agreement for public elementary schools, see secs. 19 and 21 of the Education Act, 1870. That power is by this Act extended to the purchase of land by Local Education Authorities for the purposes of higher education. See pp. 18 and 28.

As to the purchase of land otherwise than by agreement for the purpose of any of the powers and duties of a Local Education Authority under the Education Acts, see sec. 34 of the Education Act, 1918, and the unrepealed portion of sec. 20 of the Education Act, 1870.

The powers given in sub-sec. (1) above were merely intended to enlarge the powers of Local Education Authorities in obtaining land for the purposes of higher education. The compulsory powers given in sec. 34 of the Act of 1918 are in substitution for any other powers existing for that purpose, but without prejudice to any powers conferred by Provisional Order confirmed by Parliament before the appointed day that is, as regards sec. 34 of the Education Act, 1918, the 8th day of August, 1918. For sec. 34, see p. 395.

(2.) Sub-sec. 2 (i.) and (ii.) enable a Local Education Authority to use, for the purposes of higher education, land which they have acquired for elementary education; and to use for purposes of elementary education land which they have acquired for higher education.

The consent of the Board of Education is required in each case and the consent may be given without holding a local inquiry. Any Local Education Authority who desire to appropriate land under this section should pass a resolution setting out their proposal and send it for the consent of the Board of Education or the Minister of Health (to whom the powers of the Local Government Board have been transferred by the Ministry of Health Act, 1919), as the circumstances may require.

No difficulty should ordinarily arise in cases coming under sub-divisions i. and ii. of sub-sec. (1) if the proposal complies with the requirement of sub-sec. (4) and the Board of Education raise no objection.

Cases coming under sub-division (iii.) may give rise to difficult questions. Not all the land acquired by a Local Education Authority otherwise than in their capacity as Local Education Authority, is available for appropriation for education purposes, even if the authority were willing that the appropriation should be made. Land, for instance, which a County Borough Council has acquired for use as a recreation ground might be appropriated if the land has never been dedicated to the public for that purpose. But when it has been so dedicated it is not clear that the general power given in sub-division (iii.) above would enable the council in its capacity of Local Education Authority to appropriate, for the purposes of the Education Acts, part of the recreation ground which had been dedicated to the public and the public had accepted and used.

In *Attorney-General* v. *Sunderland Corporation* (1876), L. R. 2 Ch. Div. 634, the Corporation as Local Board of Health, purchased under the Public Health Act, 1848, sec. 74, a piece of land of about ten acres to be added to a public garden of fifteen acres. In 1875 the corporation determined to appropriate about a quarter of an acre at one end of this piece of land as a site for the erection of town buildings, and of a museum, public library and school of art and a conservatory. They relied on sec. 18 of the Public Libraries Act, 1855, which empowered the Council of a borough to appropriate any lands vested in them, and thereon to erect any buildings suitable for public libraries or museums or both, or for schools for science or art. It was argued that these words could not include a council chamber or office, and that even for a public library a museum or a school of science or art, they did not warrant the appropriation of lands already impressed with a trust for specific public purposes. Bacon, V.C., held that the land could not be appropriated for any of the specified purposes except a museum or conservatory. On appeal it was held that the erection of a free library was also allowable as being conducive to the better enjoyment of the public walks and grounds as such. As to the town hall and offices James, L.J., said that the corporation had no more authority to use any of this land as the site of a town hall than to use it for erecting shops; but that a library into which people may turn if the weather is unfavourable is allowable if *bonâ fide* intended for the use of persons frequenting the grounds, as it will tend to promote the convenient use of the grounds.

In *Lambeth Overseers* v. *London County Council* (1897), A.C. 625, the London County Council acquired under their General Powers Act, 1890, certain land and buildings known as Brockwell Park, and they were required by the statute to lay it out and maintain it as a recreation ground for perpetual use by the public. The question arose whether it was rateable, and the House of Lords, affirming the decision of the Court of Appeal, held that it was not. Lord Halsbury, L.C., in dealing with the question of occupation, said: "I think there is no occupation at all, the County Council being merely custodians and trustees for the public." So in *Liverpool Corporation* v. *West*

Derby Assessment Committee (1908), 2 K.B. 647, the corporation were empowered by statute to purchase land which they might think suitable for public parks or playgrounds and places of recreation for the inhabitants of the borough and to lay out and appropriate the same for any of such purposes. They were also empowered to sell or lease all or any part of the lands so acquired which should not be required for the purposes of the Act and (by a further statute) to make bye-laws for regulating the days and hours during which any park was to be open or shut and the prices of admission on any special occasion and providing that the park should not be shut on more than seven days in any one year. The Corporation purchased land under the statute which they formed into a park and appropriated to the public use and made bye-laws as authorised by the statute. The park had not been closed for fifteen years: then the Corporation permitted it to be used for a fête for a local charity and on that occasion a charge for admission was made by the persons so using the park.

It was held by the Court of Appeal, affirming the King's Bench Division, that the Corporation were not occupiers of the park for rating purposes. The Corporation, said Sir Gorell Barnes (sitting as President of the Court of Appeal), are the custodians or guardians and the public the occupiers, of this park. The Court held also that the power to close the park to the public for a few days did not make the occupation by the Corporation a beneficial occupation or inconsistent with the dedication as a public park.

On the other hand, in *Attorney-General* v. *Bradford Corporation* (1911), 9 L. G. R. 1190, Mr. Justice Eve held that certain land which the Corporation had permitted to be used by the public as part of a recreation ground might be used for a street improvement which was also an improvement of the park. The Corporation in 1870 purchased fifty-three acres of ground, covenanting to appropriate forty at the least for a public park and recreation ground. They allowed the whole of the land to be used for those purposes, but they did not definitely appropriate all of it. On the contrary, they had in each year since the acquisition of the land, down to the year 1911, in their year book, given public notice that the power to dispose of not more than fourteen acres of the said land was vested in them. In 1911 they proposed to take a strip of this land for widening the approach to the park, the existing approach being as the Corporation alleged, very dangerous and inconvenient. Mr. Justice Eve held that the whole fifty-three acres were not acquired in circumstances which properly attached to the whole of the land a statutory trust for use as a public park, but that thirteen acres were acquired for other purposes. With regard to the allegation that there had been a dedication of the whole, the learned judge found that the Corporation had allowed the community to enjoy the whole until it became necessary in their discretion to use the part they had publicly reserved for other purposes; but that that part had never been dedicated to the public. Accordingly the Court refused to interfere or to prevent the use of the land as the Corporation proposed.

By virtue of the Ministry of Health Act, 1919, and the order in Council made in June, 1919, the consent of the Minister of Health will have to be obtained instead of that of the Local Government Board to the proceedings in which by sec. 1 the consent of the Local Government Board was required.

Substitution, in Certain Cases, of Consent of Board of Education for Consent of Home Secretary.

2. The consent of the Board of Education shall be substituted for the consent of the Secretary of State for the Home

Department in cases where the consent of the said Secretary of State is required under section fourteen of the School Sites Act, 1841, and section one of the School Grants Act, 1855 (which relate to sales, exchange, or mortgages of school premises).

Sec. 14 of the School Sites Act, 1841, will be found on p. 536.

Extension of Period for Repayment of Money borrowed by County Council.

3. In the application of section sixty-nine of the Local Government Act, 1888, to money borrowed after the passing of this Act under the Education Acts by the council of a county, a period not exceeding sixty years shall be substituted for a period not exceeding thirty years as the maximum period within which borrowed money is to be repaid, and any money reborrowed for the purpose of discharging a loan raised for the purposes of the Education Acts may, if the Local Government Board approve and subject to such conditions as they impose, be repaid within such period, not exceeding sixty years from the date of the original loan, as the Local Government Board fix.

Sec. 69 of the Local Government Act, 1888, as amended, will be found on p. 553.

As to the substitution of the Minister of Health for the Local Government Board, see the last paragraph of the note on p. 265.

Power of County Council to contribute towards Capital Expenditure incurred by Non-County Boroughs or Urban Districts within their County for the Purposes of Higher Education.

4.—(1.) *In the exercise of their powers and duties under section two of the Education Act,* 1902, *a county council shall have power and at all times since the commencement of that Act shall be deemed to have had power to agree with the council of any non-county borough or urban district within their area for the payment to that last-mentioned council of a contribution towards the capital expenditure incurred by them in respect of education other than elementary to such an amount and in such instalments and for such period and subject to such conditions as may be specified in the agreement.*

(2.) *Where any such agreement is made the contribution agreed to be paid by the county council shall, for the purposes of section nineteen of the Education Act,* 1902, *form part of the security on which money may be borrowed by the council of the non-county borough or urban district under that section.*

Note 4. –Sec. 4 is repealed by the Education Act, 1918, but "without prejudice to the legality of anything retrospectively legalised thereby."

Sec. 6 of the Act of 1918 supplies a wider power of co-operation and combination than that in the repealed sec. 4 above and sec. 4 (2) is replaced by sec. 6 (5) of the Act of 1918, p. 356.

Decision of Questions as to Capital Expenditure.

5. If the Local Government Board by order declare that expenses incurred for particular purposes specified in the order may or may not be properly treated under section eighteen of the Education Act, 1902, as expenses incurred in respect of capital expenditure, no question shall be raised on audit as to the treatment of expenses incurred for those particular purposes if they are treated in accordance with the order.

Note 5.—As to the meaning of "capital expenditure," see *R.* v. *Wraith*, in the note to sec. 18 of the Education Act, 1902 ; p. 185.

If the Minister of Health to whom the powers of the Local Government Board have passed declares by order issued as above that any expenses are or are not to be treated as capital expenditure under sec. 18, the district auditor is bound, so far as his audit is concerned, to accept that declaration as final. But the declaration does not make the expenditure "capital" in law if it cannot by law be regarded as capital expenditure. Any person aggrieved by the decision may get it reviewed in the High Court by *certiorari* if he thinks it desirable to do so. An order under this section is not binding on that Court, though it will probably be given due weight there.

The effect of the order is very much the same as that of a sanction given by the Board (or their successor) under the Local Authorities (Expenses) Act, 1887 : see p. 190.

Audit of Accounts of Joint Educational Bodies.

6. Where any receipts or payments of money under the Education Acts are entrusted to any joint education committee established under section seventeen of the Education Act, 1902, or to any joint body established under section fifty-two of the Elementary Education Act, 1870, or otherwise established by two or more local authorities, the accounts of those receipts and payments shall, unless in any case the Local Government Board direct to the contrary, or any provisions to the contrary which have been approved by the Local Government Board are contained in the scheme or instrument establishing the committee or body, be audited as if the joint committee or body were a separate Local Education Authority, and the enactments relating to the audit of the accounts of Local Education Authorities (including the penal provisions of those enactments) shall apply accordingly.

Note 6.—The powers of the Local Government Board have passed to the Minister of Health under the Ministry of Health Act, 1919.

The object of this section is to bring under the audit of the district auditors the accounts of joint education committees and other similar bodies and to make the accounts of members and officers of those committees and bodies liable to disallowance and surcharge in the same manner as accounts of the members and officers of Local Education Authorities.

Sec. 17 of the Act of 1902 will be found on p. 168. A statement of the law relating to audit by the district auditors is given in the note to sec. 18 of the Act of 1902, see p. 185.

See also sec. 2 of the Education (Administrative Provisions) Act, 1909, p. 336, as to the audit of the accounts of managers of a school provided under Part II. of the Education Act, 1902.

Power to Provide for Apportionment of Expenses in a Scheme Constituting a Joint Education Committee.

7. A scheme providing for the constitution of a joint education committee under sub-section (5) of section seventeen of the Education Act, 1902, may make provision for the proportions in which any expenditure on matters referred or delegated to that committee is to be borne as between the councils of the counties, boroughs, or urban districts, or parts thereof forming the area for which the joint committee is constituted.

Note 7.—Sec. 17 (5) of the Act of 1902 will be found on p. 169; sec. 6 of the Education Act, 1918 (p. 355), contains wider provisions for co-operation and combination among Local Education Authorities than are contained in sec. 17 (5) of the Act of 1902, as amended by sec. 7 above.

Borrowing from Public Works Loan Commissioners.

8. The Public Works Loan Commissioners may lend to a Local Education Authority any money which that Authority are authorised to borrow for the purposes of Part II. of the Education Act, 1902.

Note 8.—A Local Education Authority are empowered by sec. 19 of the Education Act, 1902, to borrow for the purposes of the Elementary Education Acts, 1870 to 1900, and of the Act of 1902. The latter gave the power to borrow for the purposes of Part II., *i.e.* for higher education. Prior to the passing of the Act of 1902, the Public Works Loan Commissioners had been authorised to lend, for purposes of elementary education, by the Public Works Loans Act, 1875. The Public Works Loans Act, 1896, added to the works for which the Commissioners might lend "any work for which the council of a county, borough, district or parish are authorised to borrow." This power did not prove in practice to be a sufficiently clear authority to justify the Commissioners in lending for the purposes of Part II., of the Education Act, 1902, and accordingly the legislature gave them express power in the above section.

Amendment of sec. 7, of 56 & 57 Vict., c. 42.

9. The condition that the annual expenses of the maintenance of a school not managed by a school authority are,

to the extent of not less than one third, to be defrayed out of sources other than local rates or moneys provided by Parliament, shall cease to be a condition required for the grant of a certificate under section seven of the Elementary Education (Blind and Deaf Children) Act, 1893, to such a school as a school suitable for providing elementary education for blind or deaf children.

Note 9.—Sec. 7 of the Elementary Education (Blind and Deaf Children) Act, 1893, provided that a school should not be certified by the Board of Education as suitable for providing elementary education for blind or deaf children unless (*inter alia*), it is either managed by a school authority, or unless the annual expenses of its maintenance are to the extent of not less than one third, defrayed out of sources other than the local rates, or moneys provided by Parliament. . . . The latter condition ceases by virtue of sec. 9 above and the words which enacted the condition are repealed by sec. 17. The first effect of this change was to enable Local Education Authorities to undertake the whole cost of the maintenance of blind and deaf scholars, and the next was to make available the private funds of the institutions for the further and higher education of pupils over the age of sixteen. Another effect is that it requires Education Authorities to pay a larger proportion of the cost of education and therefore stimulates those authorities to inquire into the results of training and to secure the formation of After Care Committees for promoting the welfare of the children after they leave the school (*Report of Board of Education*, 1907-8, p. 39-40).

Decision of certain Educational Questions by Board of Education.

10. If any question arises whether any purpose for which a council wish to exercise any powers under the Education Acts is a purpose of Part II. of the Education Act, 1902, or of Part III. of that Act, that question shall be referred to and determined by the Board of Education, and their decision shall be conclusive on the matter.

Note 10.—The main purpose of Part II. of the Act of 1902 is to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education (sec. 2). The main purpose of Part III. of the Act is the provision of elementary education (sec. 5). Sec. 2 of the Education Act, 1918, may be said to enlarge the purpose of Part III. of the Act of 1902 by including practical instruction in the curriculum of public elementary schools and by requiring suitable arrangements to be made for giving advanced instruction to certain classes of children, and for co-operating with Part II. authorities in matters of common interest, especially in the preparation of children for further education in schools other than elementary and in matters connected with the supply and training of teachers. Both Part II. and Part III. authorities have the additional purpose of providing for the health and physical condition of children and young persons attending the schools and of promoting their social and physical training (sec. 17 of the Act of 1918).

Between these broad limits many doubts will arise as to whether a purpose for which a power is exercised should be charged to the account of Part II. or Part III.: sec. 10 empowers the Board of Education to give the decision, provided a Council asks for it before they exercise their powers. In the case of expenditure, the section

does not enable the Board to determine whether it is within the Education Acts; but only that if it is within the Acts, it shall be for a purpose of Part II. or of Part III.

It was long doubted whether evening schools belonged to elementary or to higher education: sec. 22. of the Act of 1902, determined the point in favour of their being maintained by the authorities for Part II. So under the Education Act, 1918, the maintenance of continuation schools is to be a purpose of the Part II. authority (sec. 3).

Provisions with Respect to Scholarships, Bursaries, &c.

11. The powers and duties of a Local Education Authority under Part III. of the Education Act, 1902, shall include a power to aid by scholarships or bursaries the instruction in public elementary schools of scholars from the age of twelve up to the limit of age fixed for the provision of instruction in a public elementary school by sub-section two of section twenty-two of that Act.

Note 11.—The limit of age fixed by sec. 22 (2), of the Act of 1902, may be enlarged under sec. 2 of the Education (Administrative Provisions) Act, 1911 (p. 342), when sec. 22 (2) could be read as if the close of the education year, fixed by the order, were substituted for the close of the school year. By 8 (5) of the Education Act, 1918, the Board of Education may, on the application of the Local Education Authority, authorise the instruction of children in public elementary schools till the end of the school term in which they reach the age of sixteen or (in special circumstances) such later age as appears to the Board desirable. The power given by sec. 11, enabling Local Education Authorities to aid by scholarships or bursaries, extends up to the age fixed by sec. 22 (2) of the Act of 1902, and it appears to be extended by sec. 2 of the Act, 1911, in cases where the age limit has been enlarged by that section. See also the provision as to maintenance in sec. 24 of the Education Act, 1918, on p. 385.

Higher Education Powers not Confined to Persons Resident in Area.

12. It is hereby declared that any power of a council under the Education Act, 1902, to supply or aid the supply of education other than elementary is not confined to the education of persons resident in their area and the words "ordinarily resident in the area of the council," in sub-section (2) of section twenty-three of the Education Act, 1902, are hereby repealed.

Note 12.—The schools and colleges attended by students in the course of their higher education are sometimes at a distance from their homes and not within the area in which they reside. Cases occur in which students from the country attend school in a county town, which, being a county borough, is in another education district. It is more useful to the cause of education that the Local Education Authority should be able to receive such students from the neighbouring country than that they should be limited to residents within their own area.

Provisions as to Vacation Schools, Health of School Children, &c., in Elementary Schools.

13.—(1.) The powers and duties of a Local Education

Authority under Part III. of the Education Act, 1902, shall include—

(*a*) power to provide, for children attending a public elementary school, vacation schools, vacation classes, play-centres, or other means of recreation during their holidays or at such other times as the Local Education Authority may prescribe, in the schoolhouse or in some other suitable place in the vicinity, so far as the Local Education Authority, in the case of a schoolhouse or place not belonging to them, can obtain for the purpose the use of the schoolhouse or place; and (1)

(*b*) the duty to provide for the medical inspection of children immediately before or at the time of or as soon as possible after their admission to a public elementary school, and on such other occasions as the Board of Education direct, and the power to make such arrangements as may be sanctioned by the Board of Education for attending to the health and physical condition of the children educated in public elementary schools: (2)

Provided that in any exercise of powers under this section, the Local Education Authority may encourage and assist the establishment or continuance of voluntary agencies, and associate with itself representatives of voluntary associations for the purpose.

(2) This section shall come into operation on the first day of January nineteen hundred and eight.

Note 13.—(1.) Under sub-sec. (1) (*a*) Education Authorities have provided vacation schools and classes, play-centres and other means of recreation for the advantage of town children. An account is given in the yearly reports of the Chief Medical Officer of the Board of Education of the working of these institutions. See for instance pp. 92 and 117-123 of the Report for 1917. Regulations for evening play-centres were issued by the Board of Education in 1917 (p. 572), and in paragraph 7 of Grant Regulations No. 7 (28th March, 1919), are set out the conditions in which grants will be made to managers of evening play-centres not provided by the Education Authority, p. 417.

(2.) In order to deal effectively with the responsibilities placed upon them by this enactment, the Board of Education established a medical department to advise and assist them in directing the efforts of Local Education Authorities in the matter. The reports issued yearly by the Chief Medical Officer of the Board since 1907 have shewn the progress and the value of the work done and the contents of these volumes deserve careful study and attention. School medical officers have been appointed everywhere; and among children of school age they have caused improvements in the conditions of living and working, as well as in school work; and they have developed systems of physical training which must be of the utmost benefit to the children in their after life.

The Reports of the Chief Medical Officer deal in detail with administrative matters which should be attended to by the Local Education

Authorities in carrying out the powers and duties placed upon them by the above section. See also circular 576, issued by the Board of Education, dated 22nd November, 1907, and the amending circulars, numbers 582 and 596 issued respectively on the 23rd January, 1908, and the 17th of August, 1908 (not printed in this volume), and sec. 2 (1) (*b*) of the Education Act, 1918, *post*, p. 347. See also sec. 39 of the Education Act, 1918, and the note thereon, on p. 409. See also the Act of 1909 on pp. 333 and 334.

As from the 1st December, 1919, the powers and duties of the Board of Education under sec. 13 (1) (*b*) were transferred to the Minister of Health; but under an arrangement that the working of the enactment will still be carried on by the Board of Education, subject to the ultimate control of that Minister. The arrangement is explained in the Circular 1136, on p. 656 in the Appendix.

In *Davis* v. *London County Council*, 30 T. L. R. 375, an action was brought against the Council as Local Education Authority by the next friend of a little girl, six years of age, who attended the babies' class at a public elementary school and was medically examined at the instance of the Education Authority. The doctor recommended an operation for adenoids and her mother consenting the operation was performed under an anaesthetic. Some of the anaesthetic was spilled and the child's cheek was burnt. The question was whether the anaesthetist had been guilty of negligence and the jury found that he had not. Mr. Justice Lush held that where an Education Authority acting under the Eduction Acts, 1907 and 1909, enter into an agreement with a medical association in regard to the performance of operations on school children, the authority are not liable for any negligence, on the part of the operators if they engage competent professional persons to perform the operations.

Distance from School no Excuse for Non-attendance when Conveyance is Provided. (39 & 40 *Vict. c.* 79.)

14.—(1.) When a Local Education Authority provide suitable means of conveyance for a child between a reasonable distance of its home and a public elementary school, it shall not be a reasonable excuse for the purposes of section seventy-four of the Elementary Education Act, 1870, or section eleven of the Elementary Education Act, 1876, . . . that there is no public elementary school open which such child can attend within the distance of its residence prescribed by those sections or by any bye-law made under section seventy-four of the Elementary Education Act, 1870. (1)

(2.) For the purposes of paragraph (*c*) of sub-section one of section eighteen of the Education Act, 1902, the county council may treat any expenses incurred by them in providing means of conveyance for teachers or children attending a public elementary school under sub-section one of section twenty-three of the Education Act, 1902, in the same manner as they may treat the capital expenditure mentioned in the said paragraph (*c*). (2)

(1.) See the note to sec. 23 of the Education Act, 1902, p. 207.
(2.) See the note (4) to sec. 18 of the Education Act, 1902, pp. 184-5

Returns by Councils having Powers under Part II. of the Education Act, 1902.

15. Every council having powers under Part II. of the Education Act, 1902, shall give to the Board of Education such information with respect to the exercise of those powers as the Board may from time to time require.

By sec. 1 of the Education Act, 1918, it is the duty of the Council of every county and county borough, as far as their powers extend to contribute towards the progressive and comprehensive organisation of education in their area. They may submit schemes, and if the Board of Education require them to do so they must submit schemes to the Board, showing the mode in which their duties and powers under the Education Acts are to be exercised. All Part II. authorities will be required by sec. 3 of the Act of 1918, to provide for the establishment of continuation schools. When that section comes into operation sec. 15 will enable the Board of Education to keep themselves informed as to the exercise of these and other powers under Part II. of the Act of 1902 by Local Education Authorities.

Register of Teachers. (62 & 63 *Vict. c.* 33.)

16.—(1.) Any obligation to frame, form, or keep a register of teachers under paragraph (*a*) of section four of the Board of Education Act, 1899, shall cease: Provided that it shall be lawful for His Majesty by Order in Council to constitute a registration council representative of the teaching profession, to whom shall be assigned the duty of forming and keeping a register of such teachers as satisfy the conditions of registration established by the Council for the time being, and who apply to be registered.

(2.) The register shall contain the names and addresses of all registered teachers in alphabetical order in one column, together with the date of their registration, and such further statement as regards their attainments, training, and experience as the Council may from time to time determine that it is desirable to set forth.

(3.) Any Order in Council under this section may be revoked altered, or added to by any subsequent Order.

(4.) Such provision shall be made by Order in Council under this section as may appear necessary or expedient for transferring any funds or property held by the existing Teacher's Registration Council to the Registration Council to be constituted under this section and for winding up the business of the existing council and thereafter dissolving the council.

(5.) The existing Teachers' Registration Council means the Teachers' Registration Council established by Order in Council made under paragraph (*a*) of section four of the Board of Education Act, 1899.

By an Order in Council made on the 29th February, 1912, a Teachers' Registration Council was constituted in accordance with the above enactment. A preliminary meeting of the new Council was held on

the 23rd July, 1912, and subsequently the Board of Education transferred to the Council the funds and property of the former Teachers' Registration Council constituted under sec. 4 of the Board of Education Act, 1899.

The Board have no further duties under the Order in Council.

The official address of the Teachers' Registration Council is 47, Bedford Square, London, W.C. 1.

Repeal, Short Title, and Construction.

17.—(1.) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2.) This Act may be cited as the Education (Administrative Provisions) Act, 1907, and shall be construed as one with the Education Acts, 1870 to 1903, and those Acts and this Act are in this Act referred to as the Education Acts, and may be cited as the Education Acts, 1870 to 1907.

It is to be observed that this Act of 1907 is to be construed as one with the Education Acts, 1870 to 1903, *i.e.* with the Acts specified on p. 213, in the note to sec. 27 of the Education Act, 1902, and the Education (London) Act, 1903; but see sec. 52 (1) of the Education Act, 1918, on p. 436. As to the effect of a direction that one Act shall be construed as one with another or other Acts, see the note to sec. 52, on p. 437.

SCHEDULE.

Section 17. ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
56 & 57 Vict. c. 42.	The Elementary Education (Blind and Deaf Children) Act, 1893.	The words "to the extent of not less than one third defrayed out of sources other than local rates or moneys provided by Parliament and are," in paragraph (*b*) of sub-section (1) of section seven.
62 & 63 Vict. c. 33.	The Board of Education Act, 1899.	Paragraph (*a*) of section four.
63 & 64 Vict. c. 53.	The Elementary Education Act, 1900.	Section five.
2 Edw. 7. c. 42.	The Education Act, 1902.	The words "ordinarily resident in the area of the council," in sub-section two of section twenty-three.

CHILDREN ACT, 1908.

(8 Edw. VII., c. 67.)

Part IV.

Reformatory and Industrial Schools.

Interpretation—Definitions.

44.—(1.) For the purposes of this Part of this Act unless the context otherwise requires—

The expression "reformatory school" means a school for the industrial training of youthful offenders, in which youthful offenders are lodged, clothed, and fed, as well as taught;

The expression "industrial school" means a school for the industrial training of children, in which children are lodged, clothed, and fed, as well as taught;

The expression "certified school" means a reformatory or industrial school which is certified in accordance with the provisions of this Part of this Act;

The expression "attendance order" means an attendance order made in pursuance of the Elementary Education Act, 1876; *see p.* 86.

The expression "child," used in reference to a child ordered to be sent to a certified industrial school or to be transferred from a certified reformatory to a certified industrial school, applies to that child during the whole period of detention, whether in the industrial school or out on licence, notwithstanding that the child attains the age of fourteen years before the expiration of that period, and, when used in reference to proceedings for the purpose of enforcing an attendance order, includes any person who, by virtue of any enactment, is deemed to be a child for the purposes of the Education Acts, 1870 to 1907.

(2.) The persons for the time being having the management or control of a school shall be deemed the managers thereof for the purposes of this Part of this Act.

Certification and Inspection of Schools.
Certification of School.

45.—(1.) The Secretary of State may upon the application of the managers of any reformatory or industrial school direct

the chief inspector of reformatory and industrial schools hereinafter mentioned to examine into the condition and regulations of the school and its fitness for the reception of youthful offenders or children to be sent there under this Part of this Act, and to report to him thereon.

(2.) The Secretary of State, if satisfied with the report of the inspector, may certify that the school is fit for the reception of youthful offenders or children to be sent there in pursuance of this Part of this Act.

Note 45.—As to who are managers, see sec. 44 (2) above. As to the appointment of chief inspector and his assistants, their powers and duties, see sec. 46. As to the inspection of certified schools, see sec. 46 (3). Power to withdraw certificates of schools is given in sec. 47; and by sec. 48, managers of a certified school may, on the conditions specified, resign the certificate. The grant of a certificate is to be advertised in the *London Gazette* (sec. 86: see also sec. 88). "Day industrial schools" may be certified by the Secretary of State after the same kind of procedure as in industrial schools, but a school must not at the same time be a day industrial school and a reformatory or industrial school (see sec. 77).

A list of certified schools in Great Britain was published as a parliamentary paper in 1914 (C. 8091). Prior to the war a list was given in the Annual Report of the Chief Inspector of Reformatory and Industrial Schools. The last list was issued in the 56th Report (1912) (Cd. 7196 of 1914). The Chief inspector could probably supply a list to an applicant who showed good reason for wanting one.

Inspection of Certified Schools.

46.—(1.) The Secretary of State may appoint a chief inspector of reformatory and industrial schools, and such number of inspectors and assistant inspectors as the Treasury may approve to assist the chief inspector; and every person so appointed to assist the chief inspector shall have such of the powers and duties of the chief inspector as the Secretary of State directs but shall act under the direction of the chief inspector.

(2.) The chief and other inspectors shall receive such remuneration and allowances out of money provided by Parliament as the Secretary of State, with the consent of the Treasury, may direct.

(3.) Every certified school shall, at least once in every year, be inspected by the chief inspector of reformatory and industrial schools, or by an inspector or assistant inspector.

Note 46.—The head office of the Chief Inspector of Reformatory and Industrial Schools is at the Home Office, Whitehall, London, S.W. 1.

In addition to the formal inspection of every certified school once in each year, it is usual for the Home Office Inspectors to visit the schools occasionally, without notice. The Inspectors of the Board of Education co-operate with the Home Office Inspectors in the inspection of these schools on the lines recommended by the Departmental Committee of 1913. In addition, some local authorities cause inspections to be made of the schools to which they send children, and some depute members of their committees to visit the schools from

time to time. The Departmental Committee of 1913 said that they did not wish to hamper inspection by local authorities. In many cases it had done much good and visits by members or officers of local authorities were welcomed by the managers; but they added,—"We do not think that local authorities should conduct detailed inspections of a kind which necessarily upset the ordinary work of the institution; in particular, formal schoolroom examinations by local authorities, in addition to the inspection conducted on behalf of the central authority, are undesirable" (Report, page 17).

Where a certified school is in the district of a local authority there is ordinarily no difficulty in visits to it being made by members of the local authority's committee. But there is no statutory power enabling the authority to pay expenses incurred by their members in making such visits; and, therefore, unless there is some special reason for visiting by members of the local authority, any expenses charged might be disallowed at the audit by the district auditor.

Power of Secretary of State to withdraw Certificate.

47. The Secretary of State, if dissatisfied with the condition, rules, management, or superintendence of a certified school, may at any time by notice served on the managers of the school declare that the certificate of the school is withdrawn as from a time specified in the notice, being not less than six months after the date of the notice; and at that time the withdrawal of the certificate shall take effect, and the school shall cease to be a certified school:

Provided that the Secretary of State may, if he thinks fit, instead of so withdrawing the certificate, by notice served on the managers of the school, prohibit the admission of youthful offenders or children to the school for such time as may be specified in the notice or until the notice is revoked.

Note 47.—As to the effect of the withdrawal of the certificate, see secs. 49 and 50, below. The notice of withdrawal may be served on the persons who for the time being have the management or control of the school (sec. 44 (2)) and in the manner indicated in sec. 87 (3) of the Act. It must be advertised in the *London Gazette* (sec. 86: see also sec. 88 (1)).

The disciplinary power given to the Home Office in the proviso to sec. 47 is based on a recommendation of the Departmental Committee of 1896. It is to be observed, however, that if the continuous flow of children into any school is interrupted for a considerable time, the administration is likely to be impaired and the financial condition of the school damaged. In such a case it may be questioned whether disciplinary action of the kind indicated in the proviso might not make a school worse instead of better.

Resignation of Certificate by Managers.

48. The managers of a certified school may, on giving six months', and the executors or administrators of a deceased manager (if only one) of a certified school may, on giving one month's, notice in writing to the Secretary of State of their intention so to do, resign the certificate for the school, and, accordingly, at the expiration of six months or one month (as the case may be) from the date of the notice (unless before

that time the notice is withdrawn), the resignation of the certificate shall take effect, and the school shall cease to be a certified school.

Note 48.—Where a school ceases under this section to be a certified school the inmates of the school have to be disposed of in the manner indicated in sec. 50: see also sec. 69, which provides generally for the discharge and transfer of the inmates of certified schools.

The notice of the managers may be given by the persons indicated in sec. 87 (2).

The resignation of a certificate must be advertised by the Secretary of State in the *London Gazette* (see sec. 86 : see also sec. 88 (1)).

Effect of Withdrawal or Resignation of Certificate.

49. A youthful offender or child shall not be received into a certified school in pursuance of this Part of this Act after the date of the receipt by the managers of the school of a notice of withdrawal of the certificate for the school or after the date of a notice of resignation of the certificate ; but the obligation hereinafter mentioned of the managers to teach, train, lodge, clothe, and feed any youthful offenders or children detained in the school at the respective dates aforesaid shall, except so far as the Secretary of State otherwise directs, continue until the withdrawal or resignation of the certificate takes effect, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the offenders and children detained in the school, whichever may first happen.

Note 49.—The duty of managers of certified schools to teach, train, lodge, clothe and feed children and youthful offenders received into such schools is laid down in sec. 52.

As to contributions from the Treasury out of money provided by Parliament, see sec. 73. In its application to day industrial schools, this section has been modified as shewn in Art. I. of the Order in Council of 2nd April, 1909 (p. 324).

Disposal of Inmates on Withdrawal or Resignation of Certificate.

50. Where a school ceases to be a certified school the youthful offenders or children detained therein shall be by order of the Secretary of State either dicharged or transferred to some other certified school in accordance with the provisions of this Part of this Act relating to discharge and transfer.

Note 50.—A school may cease to be a certified school either by the withdrawal of the certificate by the Secretary of State (see sec. 47), or by the resignation of the certificate by the managers of the school (see sec. 48). Further provisions relating to discharge and transfer of persons from certified schools are contained in sec. 69.

Auxiliary Homes.

51. Where the managers of a certified school, or the managers of two or more certified reformatory schools or of

two or more certified industrial schools, propose to establish an auxiliary home for the reception of any inmates or any classes of inmates of the school or schools, or to utilize for any such purpose an institution already in existence or about to be established by any other persons, the Secretary of State may, on the like application and report as is required in the case of the schools themselves, certify the home or institution, and the certificate may be withdrawn and resigned in like manner as a certificate of a school, but whilst the home or institution remains certified it shall for such purposes as are specified in the certificate be treated as part of the school or schools to which it is attached.

Note 51.—Provisions as to certification will be found in sec. 45; as to withdrawal of the certificate in sec. 47; and as to resignation of the certificate in sec. 48. The Departmental Committee of 1913 reported that auxiliary homes are a factor of very great value in the work of the schools. Twenty-eight certified homes existed at the date of their report and they desired to see more such homes established. Seven were added in the year 1915. Residence in them is the most effective form of supervision during the early months after leaving a school; and they are a most valuable shelter for both boys and girls for short periods between two situations. For sailor boys the homes are especially valuable; and the Committee recommended that homes should be established in all the principal ports.

Duties and Powers of Managers.

Liabilities of Managers.

52. The managers of a certified school may decline to receive any youthful offender or child proposed to be sent to them in pursuance of this Part of this Act, but when they have once accepted any such offender or child they shall be deemed to have undertaken to teach, train, lodge, clothe, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate for the school, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the offenders or children detained in the school, whichever may first happen.

Note 52.—The responsibility of providing for the reception and maintenance of children and youthful offenders rests with the County or County Borough Council, as regards cases for reformatory schools; and with the Local Education Authority, as regards cases for industrial schools (sec. 74). Most authorities make arrangements with the managers of voluntary schools to receive the children and pay towards the cost of their maintenance such sums as may be agreed with the school managers (sec. 74 (8)). The Treasury contribute such sums as they with the approval of the Home Secretary may determine (sec. 73). Some schools receive charitable subscriptions and donations; others receive practically nothing from private charity. In the result, the schools differ widely in efficiency. Many schools, owing to lack of funds, fall short of a reasonable standard of efficiency,

and the fact that not more schools of these classes exist than are necessary to accommodate the numbers of children to be sent to them, makes it difficult for the central authority to take adequate steps to bring about their improvement. Lack of the necessary funds is the bed rock of the difficulty. To meet it, the Departmental Committee of 1913 suggested that the local authorities should take a larger share in the provision and management of reformatory and industrial schools, and that they should be encouraged to do so by substantial grants from the Treasury to defray the initial expenses. To some extent the Treasury have acted on this recommendation; and increased contributions to schools have also been made by local authorities.

Sec. 52, in its application to day industrial schools, has been amended by the Order in Council of 2nd April, 1909 (see p. 325).

Boarding out of Children.

53. The managers of a certified industrial school to which a child under the age of eight years is sent may, with the consent of the Secretary of State, board the child out with any suitable person until the child reaches the age of ten years and thereafter for such longer period, with the consent of the Secretary of State, as the managers consider to be advisable in the interests of the child, subject to the exercise by the managers of such powers as to supervision, recall, and otherwise as may be prescribed by regulations made by the Secretary of State; and where a child is so boarded out he shall nevertheless be deemed for the purposes of this Part of this Act to be a child detained in the school, and the provisions of this Part of this Act shall apply accordingly, subject to such necessary adaptations as may be made by Order in Council.

Note 53.—The power given by this section has only been very sparingly used. The Departmental Committee of 1913 thought that managers of industrial schools generally have enough to do in looking after their schools and could hardly be expected to undertake readily the difficult work of finding suitable homes for boarding out their children and of supervising the children in the homes. The Committee thought the responsibility of boarding out boys should be placed upon the local authorities who ought to be able to arrange for the work of finding and supervising foster parents; and they made certain other recommendations on the subject, which, however, could only be carried out after amendment of the law (Report, 1913, p. 45). The Chief Inspector, in his Report for 1914 (p. 41), strongly advocated the boarding out system for young children, and he hoped that in the future, boarding out would be much more frequently resorted to.

Power to Make Rules.

54. The managers of a certified school may at any time, and shall whenever so required by the Secretary of State, make rules for the management and discipline of the school, but the rules so made shall in all cases be subject to approval by the Secretary of State.

Note 54.—The Home Office formerly issued model rules for use in certified schools but their present practice is to prepare a suitable draft for any certified school for which a set of rules is required.

Approval of Alterations, &c., of Buildings.

55. No substantial addition to or alteration in the buildings of a certified school shall be made without the approval in writing of the Secretary of State.

Schemes for Superannuation of Officers.

56.—(1.) The managers of any certified school may establish, or join with the managers of one or more other certified schools in establishing, a scheme for the payment of superannuation allowances to officers of the school or schools who become incapable of discharging the duties of their offices with efficiency by reason of permanent infirmity of mind or body, or of old age, upon their resigning or otherwise ceasing to hold their offices:

Provided that the scheme shall not provide for payment of any superannuation allowance in any case in which such an allowance would not be payable under the Superannuation (Metropolis) Act, 1866, or in excess of the amount of any superannuation allowance which would be payable under that Act, in similar circumstances.

(2.) The scheme may also provide for the payment under any circumstances under which a gratuity may be paid under the Superannuation (Metropolis) Act, 1866, of a gratuity not exceeding such an amount as is authorised by that Act.

(3.) The expenses incurred by the managers of any such school under any such scheme shall be treated as part of the expenses of the management of the school.

Note 56.—Certificated teachers come within the operation of the Elementary School Teachers (Superannuation) Act, 1898, and the School Teachers (Superannuation) Act, 1918 (see page 502). The latter Act also extends to teachers of such other kind as may be prescribed, etc. See 18 (ii.) on p. 522. The London County Council and a few other local authorities have made schemes for the other members of their industrial schools staff.

As to the expenses incurred by local authorities in the management of reformatory and industrial schools, see sec. 74 (13).

MODE OF SENDING OFFENDERS AND CHILDREN TO REFORMATORY AND INDUSTRIAL SCHOOLS AND THEIR TREATMENT THEREIN.

Commitment of Offenders between Twelve and Sixteen Years of Age to Reformatory Schools.

57.—(1.) Where a youthful offender, who in the opinion of the court before which he is charged is twelve years of age or upwards but less than sixteen years of age, is convicted, whether on indictment or by a petty sessional court, of an offence punishable in the case of an adult with penal servitude or imprisonment, the court may, in addition to or in lieu of sentencing him according to law to any other punishment, order that he be sent to a certified reformatory school:

Provided that where the offender is ordered to be sent to a certified reformatory school he shall not in addition be sentenced to imprisonment.

(2.) Where such an order has been made in respect of a youthful offender of the age of fourteen years or upwards, and no certified reformatory school can be found the managers of which are willing to receive him, the Secretary of State may order the offender to be brought before the court which made the order or any court having the like jurisdiction, and that court may in lieu of the detention order make such order or pass such sentence as the court may determine, so however that the order or sentence shall be such as might have been originally made or passed in respect of the offence.

Note 57.—(1.) Youthful offenders can be sent to reformatory schools, after conviction as mentioned in the section, between the ages of twelve and sixteen years. They are committed for a term of not less than three and not more than five years. The court is not to provide for their detention after they reach nineteen years. With reference to other punishments which may be given by the court in addition to sending the children or young persons to a reformatory school, reference may be made to sec. 107 of this Act (not printed in this volume). The offender must not be sentenced to imprisonment as well as sent to a reformatory school.

As to lists of certified schools, see the note to sec. 45, above.

As to the meaning of the expression "punishable in case of an adult with penal servitude or imprisonment," see *Tydeman* v. *Thrower* noted under sec. 58, below.

(2.) As to making and deferring a detention order, see sec. 61.

The Departmental Committee of 1913 recommended that the requirement of a conviction before committal to a reformatory school should be abolished, but this can only be done by legislation. In the case of offenders sent to industrial schools, a formal record of conviction is not required.

Children liable to be sent to Industrial Schools.

58.—(1.) Any person may bring before a petty sessional court any person apparently under the age of fourteen years who—

(*a*) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise), or being in any street premises or place for the purpose of so begging or receiving alms ; or

(*b*) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship ; or

(*c*) is found destitute, not being an orphan and having both parents or his surviving parent, or in the case

of an illegitimate child his mother, undergoing penal servitude or imprisonment ; or

(*d*) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child ; or

(*e*) is the daughter, whether legitimate or illegitimate, of a father who has been convicted of an offence under section four or section five of the Criminal Law Amendment Act, 1885, in respect of any of his daughters, whether legitimate or illegitimate ; or

(*f*) frequents the company of any reputed thief, or of any common or reputed prostitute ; or

(*g*) is lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child,

and the court before which a person is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient so to deal with him, may order him to be sent to a certified industrial school. Provided that a child shall not be treated as coming within the description contained in paragraph (*f*) if the only common or reputed prostitute whose company the child frequents is the mother of the child, and she exercises proper guardianship and due care to protect the child from contamination.

(2.) Where a child apparently under the age of twelve years is charged before a court of assize or quarter sessions or a petty sessional court with an offence punishable in the case of an adult by penal servitude or a less punishment, the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school.

(3.) Where a child, apparently of the age of twelve or thirteen years, who has not previously been convicted, is charged before a petty sessional court with an offence punishable in the case of an adult by penal servitude or a less punishment, and the court is satisfied that the child should be sent to a certified school but, having regard to the special circumstances of the case, should not be sent to a certified reformatory school, and is also satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over the other children in a certified industrial school, the court may order the child to be sent to a certified industrial school, having previously ascertained that the managers are willing to receive the child :

Provided that the Secretary of State may, on the applica-

tion of the managers of the industrial school, by order transfer the child to a certified reformatory school.

(4.) Where the parent or guardian of a child proves to a petty sessional court that he is unable to control the child, and that he desires the child to be sent to an industrial school under this Part of this Act, the court, if satisfied on inquiry that it is expedient so to deal with the child, and that the parent or guardian understands the results which will follow, may order him to be sent to a certified industrial school :

Provided that, if the court thinks that it is expedient that the child instead of being sent to a certified industrial school should be placed under the supervision of a probation officer, the court may deal with him in like manner as, if he had been charged with an offence, the court might have dealt with him under the Probation of Offenders Act, 1907, so however that the recognisance on entering into which he is discharged shall bind him to appear for having a detention order made against him.

(5.) Where the guardians of a poor law union or the managers of a district poor law school satisfy a petty sessional court that any child maintained in a workhouse or district poor law school is refractory or is the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, and that it is desirable that the child be sent to an industrial school under this Part of this Act, the court may, if satisfied that it is expedient so to deal with the child, order him to be sent to a certified industrial school.

(6.) A petty sessional court may, on the complaint of a Local Education Authority, made in accordance with the provisions of section twelve of the Elementary Education Act, 1876, for the purpose of enforcing an attendance order, order a child to be sent to a certified industrial school as provided in that section :

Provided that, if upon any such complaint it appears to the court that the child comes within one of the descriptions mentioned in sub-section one of this section, the court may, on the application of the Local Education Authority, proceed under that sub-section and not under this sub-section or section twelve of the Elementary Education Act, 1876.

(7.) Where under this section a court is empowered to order a child to be sent to a certified industrial school the court, in lieu of ordering him to be so sent, may in accordance with the provisions of Part II. of this Act make an order for the committal of the child to the care of a relative or other fit person named by the court, and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part.

(8.) It shall be the duty of the police authority to take proceedings under sub-section one of this section as respects any child in their district who appears to the authority to come within one of the descriptions mentioned in that sub-section, unless—

(*a*) the case is one within the cognisance of the Local Education Authority and that authority decide themselves to take the proceedings; or

(*b*) proceedings are being taken by some other person; or

(*c*) the police authority are satisfied that the taking of proceedings is undesirable in the interests of the child.

Note 58.—(1.) A child who commits a second or subsequent offence under sec. 5 (3) of the Employment of Children Act, 1903, is liable to be sent to an industrial school (see p. 242).

As to the presumption of age, see sec. 123 of this Act. Children who are liable to be sent to certified industrial schools may, if the court thinks fit, be sent to certified day industrial schools (sec. 78).

Although sec. 58 provides that any person may bring before a petty sessional court any person apparently under fourteen years of age who comes under one or more of the categories (*a*) to (*g*), yet, in practice, the responsibility of finding out and bringing to the courts children who should be sent to industrial schools devolves largely upon the Local Education Authorities. The Departmental Committee of 1913 expressed the hope that no effort would be spared by local authorities to discover, at an early age, the children who ought to be dealt with under these provisions of the Children Act. It will be seen from sub-sec. (8) that with the exceptions there indicated the duty of taking proceedings under sub-sec. (1) devolves also on the police authority.

(1) (*a*) The person who causes or procures a child or young person to beg is punishable under sec. 14 of this Act, and the child himself may be sent by the court to an industrial school.

(1) (*b*) As to the penalty on the person who wanders and takes the child with him, see sec. 118 (post): see also the Home Office Circular of 11th March, 1907.

(1) (*f*) (*g*) In *Hiscocks* v. *Jermonson*, L. R. 10 Q. B. D. 360; 52 L. J. M. C. 42; 48 L. T., N.S., 225; 31 W. R. 656, it was held that a child who lives with and under the guardianship of her mother in "a house resided in by prostitutes," might be ordered to be sent to an industrial school under the 29 & 30 Vict., c. 118, sec. 4 (repealed), although there was no evidence of any act of prostitution on the part of the mother.

In a case in which the justices were applied to to issue a summons requiring a child, apparently under the age of fourteen years, who was alleged to be lodging, living or residing with common or reputed prostitutes, and frequenting the company of prostitutes, to appear before the justices with the view to the child being sent to a certified industrial school, the justices refused to issue the summons on the ground that they had no jurisdiction in the case, as the child had not been brought before them. From the affidavits it appeared that efforts had been made to bring the child before the justices without success. It was held in the Queen's Bench Division that when, in consequence of persons keeping a child out of the way, or otherwise, there was a difficulty in bringing the child before the justices, the ordinary legal process should be followed and a summons issued (*R.* v. *Moore*, 52 J. P. 375). See also *In re Hampshire Justices*, 52 J.P. 311 and *Walker* v. *Laxton*, *ante*, p. 94.

Where a child apparently under the age of fourteen years was brought before justices upon a charge of larceny and the charge was dismissed,

but evidence was given that the child frequented the company of reputed thieves, the justices were held to have jurisdiction to order the child to be sent to an industrial school under secs. 14 and 15 of the Industrial Schools Act, 1866 (repealed), without a fresh summons upon a substantive charge under those sections, as the Act was not a penal but a benevolent and protective Act for the benefit of children (*R.* v. *Jennings* [1896], 1 Q. B. 64; 65 L. J. M. C. 26; 73, L. T. 412; 44 W. R. 128).

(3.) *In Tydeman* v. *Thrower* (1914), 2 K.B. 494; 12 L. G. R. 739), the question arose whether there is power to send a boy to a certified industrial school if he has committed an offence which is punishable only by imprisonment and not by penal servitude. The answer depends on sec. 58 (3), read with sec. 57. The court thought that "punishable by penal servitude or a less punishment," in sec. 58 (3) means that the power given in the sub-sec. may be exercised, either where the charge is of an offence punishable with penal servitude or where it is of an offence punishable with a less punishment. Sec. 57 must be construed in the same way as sec. 58. The effect of the interpretation put on sec. 58 (3), by the court is that justices will have power to apply its provisions even in the case of slight offences punishable only with a fine. But although they may send a boy to an industrial school for a slight offence, they will not be able to send him to a reformatory school unless the offence is one punishable with imprisonment as a minimum, see sec. 57 (1).

(4.) It is to be noted that under sec. 74 (6) an order for the detention of a child in a certified industrial school is not to be made unless the Local Education Authority has been given an opportunity of being heard. See the case of *A. B.* v *Howman*, noted under sec. 74 (6).

Moreover, if the child is sent to a certified industrial school in any of the circumstances specified in paras. *a*—*d* of sec. 74 (5), the Local Education Authority will not be bound to provide for his reception or maintenance in a certified school, although they may contribute towards his maintenance there if they think fit.

(5.) Where a child is sent to a certified industrial school at the instance of a Board of Guardians under sub-sec. (5), the Local Education Authority will not be required to provide for his reception or maintenance there (see sec. 74 (5) (*b*)), but the guardians themselves will have to contribute towards his maintenance as provided in sec. 74 (11).

(6.) Under sec. 12 of the Education Act, 1876, a child may be sent to a certified day industrial school on his failure to comply with a school attendance order, but if there is no such school available, then he may be sent to a certified industrial school. As to the duty of the local authority in regard to his reception and maintenance, see sec. 74 (2). In proceedings under sec. 12 of the Act of 1876, the court have to be satisfied that there was no reasonable excuse for not complying with the attendance order, whereas there would be no such requirement if the proceedings were taken under sub-sec. (1) of this section.

(7.) See secs. 21 and 38 (1), as to the committal of a child to the care of a relative or some other fit person. The sections referred to are not printed in this volume.

Power to Commit Young Persons to Care of Relative or fit Person in Certain Cases.

59. Any person may bring before a petty sessional court any person apparently of the age of fourteen or fifteen years so circumstanced that if he were a child he would come within

one or other of the descriptions mentioned in sub-section one of the last foregoing section, and the court, if satisfied on inquiry of that fact and that it is expedient so to deal with him, may, in accordance with the provisions of Part II. of this Act, make an order for his committal to the care of a relative or other fit person named by the court, and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part.

Note 59.—See note (7) to sec. 58, above.

Power in such Cases to Place Young Persons under Supervision of Probation Officer.

60. Where under the provisions of this Part of this Act an order is made for the committal of a child or young person to the care of a relative or other fit person named by the court, the court may in addition to such order make an order under the Probation of Offenders Act, 1907, that the child or young person be placed under the supervision of a probation officer.

Provided that the recognisance into which the child, if not charged with an offence, or the young person is required to enter, shall bind him to appear and submit to the further order of the court.

Note 60.—As to the commital of children or young persons to the care of a relative or fit person in certain cases, see sec. 59, above.

Power to Defer Operation of Order.

61. An order of a court ordering a youthful offender or child to be sent to and detained in a certified school (in this Act referred to as a detention order) may, if the court think fit, be made to take effect either immediately or at any later date specified therein, regard being had to the age or health of the youthful offender or child.

Note 61.—As to what is to be done with the child where a detention order is made but is not to take effect immediately, see sec. 63. Sec. 64 provides that the detention order shall be a sufficient authority for the conveyance of the youthful offender or child to and detention in the school to which he is sent. The period for which the youthful offender or child is to be detained must be stated in the detention order (see sec. 65).

Choice of School.

62.—(1.) The school to which a youthful offender or child is to be sent under a detention order shall be such school as may be specified in the order, being some certified school (whether situate within the jurisdiction of the court making the order or not) the managers of which are willing to receive the youthful offender or child :

Provided that, if it is found impossible to specify the school in the detention order, the school shall, subject to the pro-

visions of this Act with respect to the determination of the place of residence of a youthful offender or child, be such as a justice having jurisdiction in the place where the court which made the order sat may by endorsement on the detention order direct.

(2.) Where the court is satisfied that a youthful offender or child is, by reason of mental or physical defect, incapable of receiving proper benefit from industrial training in an ordinary certified school, but is not incapable by reason of such defect of receiving benefit from industrial training in a certified school where special provision is made for the training of youthful offenders or children suffering from such defect, the detention order (if any) shall be for detention in a school where such provision is made.

Note. 62.—(1.) The term "certified School," is defined in sec. 44, see also sec. 45; or it may be a certified day industrial school, see secs. 78 and 77. The local authority usually chooses the school and applies to a court of summary jurisdiction to specify in the detention order the school chosen. The school should be one conducted in accordance with the religious persuasion of the child's parents (sec. 66). The school need not be in the area of the local authority. Arrangements for conveying the youthful offender or child to the school are provided for in sec. 64, and the officer who conveys him has the powers indicated in sec. 85. As to lists of certified schools, see the note to sec. 45 above.

(2.) As to the duty of Local Education Authorities in regard to the education of mentally or physically defective children, see the Mental Deficiency Act, 1913, sec. 31 (p. 470), and sec. 1 of the Elementary Education (Defective and Epileptic Children) Act, 1914 (p. 472).

Sec. 62 in its application to day industrial Schools is amended as shewn in Art III. of the Order in Council of 2nd April, 1909 (p. 325).

Temporary Detention until sent to Certified School.

63. If—

(*a*) a detention order is made but is not to take effect immediately, or,

(*b*) at the time specified for the order to take effect the youthful offender or child is unfit to be sent to a certified school; or,

(*c*) the school to which the youthful offender or child is to be sent cannot be ascertained until inquiry has been made,

the court may make an order committing him either to custody in any place to which he might be committed on remand under Part V. of this Act, or to the custody of a relative or other fit person to whose care he might be committed under Part II. of this Act, and he shall be kept in that custody accordingly until he is sent to a certified school in pursuance of the detention order.

Note 63.—Provision as to places of detention is made in sec. 108 of the Act; and as to the custody of a relative or other fit person to

whose care a youthful offender or child may be committed under Part II. of the Act, see secs. 21 and 38. These sections are not printed in this volume.

As to the duties and powers of local authorities with respect to the maintenance and care of inmates of certified schools, see sec. 64.

Conveyance to School.

64.—(1.) The person by whom any youthful offender or child ordered to be sent to a certified school is detained shall at the appointed time deliver him into the custody of the constable or other person responsible for his conveyance to school, who shall deliver him to the superintendent or other person in charge of the school in which he is to be detained, together with the order or other document in pursuance of which the offender or child was detained and is sent to the school.

(2.) The detention order in pursuance of which the youthful offender or child is sent to a certified school shall be a sufficient authority for his conveyance to and detention in the school or any other school to which he is transferred under this Part of this Act.

Note 64.—The order referred to is the detention order mentioned in sec. 61. As to the powers of school officers who convey a youthful offender or child to school in the event of his trying to escape, see sec. 85. As to defraying the expenses of conveyance and of the clothing requisite for his admission to the school, see sec. 76.

Period of Detention.

65. The detention order shall specify the time for which the youthful offender or child is to be detained in the school, being—

(*a*) in the case of a youthful offender sent to a reformatory school, not less than three and not more than five years, but not in any case extending beyond the time when the youthful offender will, in the opinion of the court, attain the age of nineteen years; and

(*b*) in the case of a child sent to an industrial school, such time as to the court may seem proper for the teaching and training of the child, but not in any case extending beyond the time when the child will, in the opinion of the court attain the age of sixteen years.

Note 65.—Although the period of detention has to be specified by the court in the detention order, the full time so specified is not necessarily spent in the certified school. After spending a period in the school the children may be placed out on licence, which may permit them to live with any trustworthy and respectable people who are willing to receive them. The time during which they are out on licence is deemed to be part of the time of their detention: see sec. 67 (1) and (4).

By sec. 68 a period of supervision may follow after the expiration of the period of detention.

By sec. 71 (3) the period of detention may be increased for refusal to conform to rules notwithstanding that the period so increased will extend beyond the limits imposed by Part IV. of this Act, *i.e.* by sec. 65.

Sec. 72 (3) provides that where a youthful offender or child escapes and is brought back to a certified school, the time that he is away is not to be reckoned as part of the period of detention.

Sec. 65 in its application to day industrial schools is modified by Art. IV. of the Order in Council of 2nd April, 1909 (p. 326).

Provision as to Religious Persuasion.

66.—(1.) The court or justice, in determining the certified school to which a youthful offender or child is to be sent, shall endeavour to ascertain the religious persuasion to which the offender or child belongs, and the detention order shall, where practicable, specify the religious persuasion to which the offender or child appears to belong, and a school conducted in accordance with that persuasion shall, where practicable, be selected.

(2.) A minister of the religious persuasion specified in the order as that to which a youthful offender or child sent to a certified school appears to belong may visit the offender or child at the school on such days, at such times, and on such conditions, as may be fixed by the Secretary of State, for the purpose of affording him religious assistance and also for the purpose of instructing him in the principles of his religion.

(3.) Where an order has been made for sending a youthful offender or child to a certified school which is not conducted in accordance with the religious persuasion to which the offender belongs, the parent, legal guardian, nearest adult relative, or person entitled to the custody of the offender or child may apply—

(*a*) if the detention order was made by a petty sessional court, to a petty sessional court acting in and for the place in and for which the court which made the order acted; and

(*b*) in any other case, to the Secretary of State,

to remove or send the offender or child to a certified school conducted in accordance with the offender's or child's religious persuasion, and the court or Secretary of State shall, on proof of the offender's or child's religious persuasion, comply with the request of the applicant:

Provided that—

(i.) the application must be made before the offender or child has been sent to a certified school, or within thirty days after his arrival at the school; and

(ii.) the applicant must show to the satisfaction of the court or Secretary of State that the managers of the school named by him are willing to receive the offender or child:

(iii.) nothing in this section shall be construed as preventing any such person as aforesaid from making an application to the Secretary of State after the expiration of the said period of thirty days to exercise the powers of transfer conferred on him by the other provisions of this Act.

Note 66.—If the youthful offender or child desires to be brought up in some other religion than that in which he is being brought up in the certified school to which he belongs, he may apparently under this section apply to the petty sessional court, or to the Secretary of State, as the circumstances of his case may require. The principles laid down in the case of In *re W.* (*W.* v. *M.*) (1907), 2 Ch. 557, may be usefully referred to in support of any such application. As to the Secretary of State's powers of transfer, see sec. 69.

Sec. 66, in its application to day industrial schools, is modified by Art. V. of the Order in Council of 2nd April, 1909 (p. 326).

Placing out on Licence.

67.—(1.) Where a youthful offender or child is detained in a certified school, the managers of the school may at any time, with the consent—

(*a*) in the case of a child sent to an industrial school at the instance of the Local Education Authority, of that authority; and

(*b*) in any other case of the Secretary of State;

or after the expiration of eighteen months of the period of detention without any such consent, by licence permit the offender or child to live with any trustworthy and respectable person named in the licence willing to receive and take charge of him:

Provided that where the licence is granted in respect of a child under the age of fourteen years it shall be conditional on the child attending as a day scholar, in accordance with the bye-laws in force in the place where he resides, some school named in the licence, being a certified efficient school within the meaning of the Elementary Education Act, 1876.

(2.) Any licence so granted shall be in force until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3.) The managers of the school may at any time by order in writing revoke any such licence, and order the offender or child to return to the school.

(4.) Any youthful offender or child escaping from the person with whom he is placed in pursuance of this section, or refusing to return to the school when required to do so on the revocation or forfeiture of his licence, shall be liable to the same penalty as if he had escaped from the school itself.

(5.) The time during which a youthful offender or child is absent from a certified school in pursuance of a licence under this section shall be deemed to be part of the time of his deten-

tion in the school: Provided that, where a youthful offender or child has failed to return to the school on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the school.

(6.) Where a licence has been revoked or forfeited and the youthful offender or child refuses or fails to return to the school, a court of summary jurisdiction, if satisfied by information on oath that there is reasonable ground for believing that his parent or guardian could produce the youthful offender or child, may issue a summons requiring the parent or guardian to attend at the court on such day as may be specified in the summons, and to produce the child, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of this Part of this Act, be liable on summary conviction to a fine not exceeding one pound.

Note 67.—If their parents are trustworthy and respectable the children may be licensed to their homes. The Chief Inspector in his report for 1914 (p. 13), gives solid reasons for the issue of such licences and for a large increase in the practice of placing children, more especially boys, out on licence. He says that the industrial school boy may in most cases be licensed by the time he is fourteen and a half or fifteen years old or even before, especially if he entered a school as a child of tender years. With regard to the condition that a licensed child under fourteen shall attend a certified efficient school, see the definition in sec. 48 of the Education Act, 1876 (p. 100).

(3) Managers may at any time, for good reasons, revoke a licence and bring the child or young person back to the school: as to the expenses, see sec. 76.

(4) Punishment for attempting to escape from school is provided in sec. 72. In sec. 72 (6) provision is made for the punishment of any person who assists or induces a child out on licence to escape from the person with whom he is placed on licence; or who harbours, conceals, or prevents from returning, any child who has so escaped.

Sec. 67 in its application to day industrial schools is modified by Art VI. of the Order in Council of 2nd April, 1909 (p. 327).

Supervision of Youthful Offenders and Children after the Expiration of Period of Detention.

68.—(1.) Every youthful offender sent to a certified reformatory school shall, on the expiration of the period of his detention, if that period expires before he attains the age of nineteen years, remain up to the age of nineteen under the supervision of the managers of the school.

(2.) Every child sent to an industrial school shall, from the expiration of the period of his detention, remain up to the age of eighteen under the supervision of the managers of the school: Provided that this sub-section shall not apply in any case where the child was ordered to be sent to an industrial school for the purpose only of enforcing an attendance order

made in consequence of his parent, guardian, or other person legally liable to maintain him neglecting to provide efficient elementary instruction for him.

(3.) The managers may grant to any person under their supervision a licence in the manner provided by this Part of this Act, and may revoke any such licence, and recall any such person to the school; and any person so recalled may be detained in the school for a period not exceeding three months, and may at any time be again placed out on licence: Provided that—

(*a*) a person shall not be so recalled unless the managers are of opinion that the recall is necessary for his protection; and

(*b*) the managers shall send to the chief inspector of reformatory and industrial schools an immediate notification of the recall of any person, and shall state the reasons for his recall; and

(*c*) they shall again place the person out as soon as possible, and at latest within three months after the recall, and shall forthwith notify the chief inspector that the person has been placed out.

(4.) A licence granted to a youthful offender or child before the expiration of his period of detention shall, if he is liable to be under supervision in accordance with this section, continue in force after the expiration of that period, and may be revoked in manner provided by this Part of this Act.

(5.) The Secretary of State may at any time order that a person under supervision under this section shall cease to be under such supervision.

(6.) When a youthful offender or child is under the supervision of the managers of a certified school it shall not be lawful for his parent to exercise, as respects the youthful offender or child, his rights and powers as parent in such a manner as to interefere with the control of the managers over the youthful offender or child.

Note 68.—As to the length of the period of detention, see sec. 65. The young person or child may be placed out on licence before the period of detention expires (sec. 67 above). The object of sec. 68 is to enable the managers of a certified school to provide for the supervision of young persons and children after the expiration of their period of detention. The Departmental Committee of 1913 reported in favour of the system of supervision. "The importance of the licence," they said, "rests in the fact that the control which the school is enabled thereby to exercise over the boys or girls during the period immediately after they have left, has a most useful effect in enabling them to withstand the unsteadying effect of the freedom of the outer world, accustomed as they have been to the regulated life of an institution. It is indispensable, too, in many cases, in order to enable the school authorities to keep the boys or girls in the situations found for them. Without it, it would be impossible for the school to offer an effective resistance to the efforts of parents who are eager to entice their children

from situations found for them, to bring them back to bad homes and to induce them to follow blind-alley occupations, because these command higher wages for the time being. (Report, p. 47.)

In the case of the industrial schools, there is, except in the cases mentioned in the proviso to sec. 68 (2), always at least two years' supervision of the child or young person by the school managers until he reaches the age of eighteen.

Discharge and Transfer.

69.—(1.) The Secretary of State may at any time order a youthful offender or a child to be discharged from a certified school, either absolutely or on such conditions as the Secretary of State approves, and may, where the order of discharge is conditional, revoke the order on the breach of any of the conditions on which it was granted, and thereupon the youthful offender or child shall return to school, and if he fails to do so he and any person who knowingly harbours or conceals him or prevents him from returning to school shall be liable to the same penalty as if the youthful offender or child had escaped from the school.

(2.) The Secretary of State may order—

(*a*) a youthful offender or child to be transferred from one certified reformatory school to another, or from one certified industrial school to another ;

(*b*) a youthful offender under the age of fourteen years detained in a certified reformatory school to be transferred to a certified industrial school ;

(*c*) a child over the age of twelve years detained in a certified industrial school, who is found to be exercising an evil influence over the other children in the school, to be transferred to a certified reformatory school ;

so however that the whole period of the detention of the offender or child shall not be increased by the transfer.

(3.) Where a youthful offender or child is detained in a certified school in one part of the United Kingdom, the central authority for that part of the United Kingdom may, subject to the provisions of this section, direct the youthful offender or child to be transferred to a certified school in another part of the United Kingdom if the central authority for that other part consents.

For the purpose of this provision "central authority" means the Secretary of State, the Secretary for Scotland, or the Chief Secretary, as the case may be.

Note 69.—As to the penalty where a youthful offender escapes from school, see sec. 72.

This section enables children to be sent to the schools which are most suitable to their requirements. Thus, if the training in schools were classified, a youthful offender or child could be sent for training to a school which trained in the particular trade which seemed most suitable for him. Boys intended for the sea could be trained in a nautical

school, rather than kept in a school where no sea-training could be given.

The Departmental Committee of 1913 said (Report, p. 51), that unless specially trained it is nowadays difficult to find good and promising places for boys at sea. Properly trained boys can obtain good posts as signallers, buglers and wireless operators, as well as cooks and ordinary deck hands.

It is doubtful, however, whether much progress has been made in the direction of classification of schools according to systems of training. Perhaps this will receive more attention now that the war is over.

As to the expenses of removing a person from one school to another, see secs. 73 and 74, especially 74 (10). Sec. 74 (10) provides for maintenance in the transferred school.

Sec. 69, in its application to day industrial schools, is modified by Art. VII. of the Order in Council of 2nd April, 1909 (p. 328).

Power to Apprentice or Dispose of Child.

70. If any youthful offender or child detained in or placed out on licence from a certified school, or a person when under the supervision of the managers of such a school, conducts himself well, the managers of the school may, with his own consent, apprentice him to, or dispose of him in, any trade, calling, or service, including service in the Navy or Army, or by emigration, notwithstanding that his period of detention or supervision has not expired; and such apprenticing or disposition shall be as valid as if the managers were his parents:

Provided that where he is to be disposed of by emigration, and in any case unless he has been detained for twelve months, the consent of the Secretary of State shall also be required for the exercise of any power under this section.

Note 70.—The Departmental Committee of 1913 regarded emigration as one of the best means of disposal open to the managers of schools. The Treasury make considerable grants towards the cost of emigration (Report, p. 59). By sec. 74 (9), local authorities may contribute towards the ultimate disposal of their inmates in certified schools.

Offences in Relation to Certified Schools.

Refusal to Conform to Rules.

71.—(1.) If a youthful offender detained in a certified reformatory school is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable upon summary conviction to have the period of his detention in the reformatory school increased by such period not exceeding six months as the court directs, or, if of the age of sixteen years or upwards, to be imprisoned, with or without hard labour, for any term not exceeding three months; and if sentenced to imprisonment he shall, at the expiration of the term thereof, by and at the expense of the managers of the school in which the offence was committed, be brought back to a certified

reformatory school, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his being sent to prison.

(2.) If a child of the age of twelve years or upwards detained in a certified industrial school is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable on summary conviction to be sent to a certified reformatory school, and to be there detained, subject and according to the provisions of this Part of this Act.

(3.) A period of detention may be increased in pursuance of this section notwithstanding that the period as so increased will extend beyond the limits imposed by this Part of this Act.

Note 71.—With regard to the punishment of youthful offenders convicted of reformatory school offences, sec. 2 of the Prevention of Crime Act, 1908, provides as follows:—"Where a youthful offender sentenced to detention in a reformatory school is convicted under any Act before a court of summary jurisdiction of the offence of committing a breach of the rules of the school, or of inciting to such a breach, or of escaping from such a school, and the court might under that Act sentence the offender to imprisonment, the court may, in lieu of sentencing him to imprisoment, sentence him to detention in a Borstal Institution for a term not less than one year nor more than three years, and in such case the sentence shall supersede the sentence of detention in a reformatory school."

(3). As to the "limits imposed by this Part of this Act," see sec. 65 above and sec. 84 below.

Sec. 71, in its application to day industrial schools, is modified by Art. VIII. of the Order in Council of 2nd April, 1909 (p. 328).

Escaping from School.

72.—(1.) If a youthful offender detained in a certified reformatory school escapes from the school, he may, at any time before the expiration of his period of detention, be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate; and he shall be liable on summary conviction to be brought back to the reformatory school and to have the period of his detention therein increased by such period not exceeding six months as the court directs, or, if of the age of sixteen years or upwards, to be imprisoned, with or without hard labour, for any term not exceeding three months; and if sentenced to imprisonment he shall, at the expiraton of the term thereof, be brought back to a certified reformatory school.

(2.) If a child detained in a certified industrial school escapes from the school, he may at any time before the expiration of his period of detention be apprehended without warrant,

and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate ; and he shall be liable, on summary conviction, to be brought back to the school from which he escaped, or, if of the age of twelve years or upwards, to be sent to a certified reformatory school and to be there detained subject and according to the provisions of this Part of this Act.

(3.) In computing the time during which a youthful offender or child who, having escaped, is brought back to a certified school is thereafter liable to be detained in that school, the time during which he was absent from school, including the time (if any) during which he was imprisoned under this section, shall not be reckoned as part of the period of detention.

(4.) The expenses of bringing a youthful offender or child back to the school shall be borne by the managers of the school from which he escaped.

(5.) Where the period for which a youthful offender or child, on being brought back to the school from which he escaped, is liable to be detained therein would, by virtue of this section, whether on account of any increase in the period of detention or otherwise, extend beyond the limits imposed by this Part of this Act, the youthful offender or child may notwithstanding anything in this Part of this Act be detained in the school in accordance with this section.

(6.) If any person—

(*a*) knowingly assists or induces directly or indirectly an offender or child detained in or placed out on licence from a certified school to escape from the school or from any person with whom he is placed out on licence ;

(*b*) knowingly harbours, conceals, or prevents from returning to school, or to any person with whom he is placed out on licence, an offender or child who has so escaped, or knowingly assists in so doing ;

he shall, on summary conviction, be liable to be imprisoned for any term not exceeding two months, with or without hard labour, or to a fine not exceeding twenty pounds.

Note. 72.—(5). As to the "limits imposed by this Part of this Act," see sec. 65 above, and 84 below.

Sec. 72, in its application to day industrial schools, is modified by Art. IX. of the Order in Council of 2nd April, 1909 (p. 328).

Expenses of Certified Schools.

Contributions from Treasury.

73. There shall be paid out of money provided by Parliament such sums on such conditions as the Secretary of State

may, with the approval of the Treasury, recommend towards the expenses of any youthful offender or child detained in a certified school, including the expenses of removal in the case of any offender or child ordered to be transferred from one school to another and towards the expenses of disposing of any such offender or child by emigration :

Provided that the contribution shall not exceed two shillings per head per week for children detained in an industrial school on the application of their parents or guardians.

Note 73.—No formal "recommendations" under this section have been made by the Secretary of State with the approval of the Treasury but revised tables of contribution have been made.

The chief sources of income of certified schools are the contributions from the government and from local authorities. Some schools receive public subscriptions, but in most of them this is not an asset of much value. Industrial profits made in the schools are very small, and the contributions from parents (under sec. 75) are also small. The Departmental Committee of 1913 dealt at length with the financial aspect of the case, and the reader is referred to their report, pages 63 and 64 and 66 to 94, for full information on the subject (Cd. 6838—1913, price 1s.).

Duties and Powers of Local Authorities with Respect to the Maintenance, &c., of Inmates of Certified Schools.

74.—(1.) Where a youthful offender is ordered to be sent to a certified reformatory school, it shall be the duty of the council of the county or county borough in which he resides (to be specified in the order) to provide for his reception and maintenance in a certified reformatory school suitable to the case, having regard to the requirements of this Part of this Act.

(2.) Where a child is ordered to be sent to a certified industrial school, it shall be the duty of the Local Education Authority of the district in which he resides (to be specified in the order) to provide for his reception and maintenance in a certified industrial school suitable to the case, having regard to the requirements of this Part of this Act.

(3.) For the purposes of the foregoing provisions of this section a youthful offender or child shall be presumed to reside in the place where the offence was committed, or the circumstances which rendered him liable to be sent to a certified school occurred, unless it is proved that he resided in some other place.

(4.) Where the court by which the detention order is made is a court of assize or a court of quarter sessions, the court shall remit to a court of summary jurisdiction for the place where the youthful offender or child was committed for trial the determination of his place of residence.

(5.) The obligation imposed under this section on a Local Education Authority shall not apply in the case of a child sent to a certified industrial school—

(*a*) at the desire of his parent or guardian as being a child whom the parent or guardian is unable to control ; or

(*b*) at the instance of the guardians of a poor law union or the managers of a district poor law school as being a refractory child, or as being the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment ; or

(*c*) being a child who had no settled place of abode and who habitually wandered from place to place through the districts of various Local Education Authorities ; or

(*d*) in respect of whose maintenance in a certified school no contribution is paid out of moneys provided by Parliament.

But the Local Education Authority who would but for this provision have been responsible for the maintenance of the child may, if they think fit, contribute towards his maintenance or provide for his maintenance in a certified school in any such case.

(6.) An order for the detention of a child in a certified industrial school shall not be made by a petty sessional court unless the Local Education Authority, which by virtue of the order are responsible for providing for the reception and maintenance of the child in a certified school, have been given an opportunity of being heard.

(7.) Where a local authority, that is to say, as respects reformatory schools the council of a county or county borough, and as respects industrial schools a Local Education Authority, are aggrieved by the decision of a court as to the place of residence of a youthful offender or child, they may within three months after the making of the detention order apply to a petty sessional court acting in and for the place for which the court which made the order or determined the place of residence acted, and that court, on proof to its satisfaction that the youthful offender or child was resident in the area of another local authority, and after giving such other local authority an opportunity of being heard, may transfer the liability to maintain the youthful offender or child in a certified school to that other local authority, and may order that other authority to repay to the first-mentioned local authority any expenses incurred by them in respect of the youthful offender or child under the detention order, and an appeal shall lie from the decision of the court to a court of quarter sessions ; but nothing in this provision shall affect the liability of the first-mentioned local authority under the detention order until an order has been made transferring the liability to another local authority.

(8.) For the purpose of the performance of their duties under this Part of this Act, a local authority—

(*a*) may contract with the managers of any certified school for the reception and maintenance therein of youthful offenders or children for whose reception and maintenance the authority are required under this section to make provision ;

(*b*) may, with the approval of the Secretary of State, undertake or combine with any other such authority in undertaking, or contribute such sums of money upon such conditions as they may think fit towards, the establishment, building, alteration, enlargement, rebuilding, or management of a certified school, or the purchase of any land required for the use of an existing certified school, or for the site of any school intended to be a certified school.

(9.) A local authority may contribute towards the ultimate disposal of any inmate of a certified school for whose maintenance in such a school the authority are under this section responsible, or towards whose maintenance the authority have voluntarily contributed.

(10.) The local authority responsible for the maintenance of a youthful offender or child in a certified school under this section shall continue responsible for his maintenance in the event of his transfer to another certified school, notwithstanding that having been originally ordered to be sent to a reformatory school he is subsequently transferred to an industrial school, or having been originally ordered to be sent to an industrial school he is subsequently transferred to or ordered by a court to be sent to a reformatory school :

Provided that, before any such youthful offender or child is ordered to be transferred from one school to another, notice shall be given to the local authority responsible for his maintenance, and that authority shall be given an opportunity of making representations to the Secretary of State with respect thereto.

(11.) Where a child has been ordered to be sent to a certified industrial school at the instance of the guardians of a poor law union or the managers of a district poor law school as refractory, or as the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, the guardians or managers shall contribute towards the maintenance of the child in a certified industrial school such sums as may be agreed upon between them and the managers of the certified school to which the child is ordered to be sent, or in default of agreement as may be fixed by the Secretary of State.

(12.) Land may be acquired by a local authority for the purposes of this Part of this Act—

(*a*) as respects reformatory schools, under and in accordance with the Local Government Act, 1888, in the case of the council of a county, and as for the purposes of the Public Health Acts in the case of the council of a county borough ;

(*b*) as respects industrial schools, as for the purposes of the Education Acts, 1870 to 1907.

(13.) The expenses incurred by a local authority under this Part of this Act shall be defrayed—

(*a*) as respects reformatory schools, as expenses for general county purposes in the case of the council of a county, and out of the borough fund or borough rate in the case of the council of a county borough ;

(*b*) as respects industrial schools, as expenses incurred for the purposes of elementary education.

(14.) Money may be borrowed by a local authority for the purposes of defraying or contributing towards the expenses of establishing, building, altering, enlarging, rebuilding, or purchasing land for the use or site of—

(*a*) a reformatory school, under and in accordance with the Local Government Act, 1888, in the case of the council of a county, and under and in accordance with the Municipal Corporations Act, 1882, in the case of a council of a county borough ;

(*b*) an industrial school, under and in accordance with the Education Acts, 1870 to 1907 :

Provided that the maximum period within which money so borrowed is to be repaid shall be sixty years.

(15.) Where two or more Local Education Authorities, with the approval of the Secretary of State, agree to combine for any of the purposes of this section, the agreement may provide for the appointment of a joint body of managers, and for the apportionment of the contributions to be paid by each authority and any other matters which, in the opinion of the Secretary of State, are necessary for carrying out the agreement and the expenses of any such joint body of managers shall be paid in the proportions specified in the agreement by each of the authorities, and their receipts and payments shall be audited in manner provided by section six of the Education (Administrative Provisions) Act, 1907.

(16.) For the purpose of obtaining the approval of the Secretary of State where required by this section, there shall be forwarded to the Secretary of State particulars of the proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding, or building drawn on such scale and accompanied by such particulars and estimate of cost as the Secretary of State thinks fit to require, and the Secretary of State may approve the plan and particulars

submitted to him, with or without modification, or may disapprove them.

(17.) Where before the commencement of this Act a county council have, in their capacity of county council, established an industrial school, the school shall become the property of the county council in their capacity of Local Education Authority, and such adjustments as may be required for the purpose shall be made between the county council and the Local Education Authorities within the county (including the county council in their capacity of Local Education Authority), and section sixty-eight of the Local Government Act, 1894, shall apply to such adjustments in like manner as it applies to adjustments required for the purposes of that Act.

(18.) As respects the city of London the Common Council shall, notwithstanding anything in this section, be the local authority liable for providing for the reception and maintenance in a certified reformatory school of a youthful offender committed by a petty sessional court acting in and for the city :

Provided that nothing in this provision shall exempt the city of London from contributing towards the expense incurred by the London County Council in respect of reformatory schools, but the London County Council shall in each year repay to the Common Council for each youthful offender maintained by that council a sum equal to the average cost to the London County Council in that year of the maintenance of a youthful offender in a reformatory school for whose maintenance the London County Council are responsible, which cost shall be ascertained in accordance with the directions of the Secretary of State.

Note 74.—*Sub-sec.* (1).—Sec. 62 requires the school to be specified in the order. The choice of reformatory school rests with the council of the county or county borough, and the council must inform the court that makes the detention order the name of the school to be specified in it. If the school cannot be ascertained until inquiry has been made, the court may proceed as indicated in sec. 63 above.

As to the requirements of this Part of the Act respecting the suitability of the school to the case, see secs. 62 and 66.

As to the expenses of maintenance, see sub-sec. (13) and note thereon.

Sub-sec. (2.)—See the note to sub-sec. (1). The choice of industrial school rests with the Local Education Authority : but the obligation imposed by this section on the Local Education Authority does not apply in the circumstances indicated in sub-sec. (5).

Sub-sec. (3)—(2) PLACE WHERE THE OFFENCE WAS COMMITTED RESIDENCE. Difficulty sometimes arises in ascertaining the precise locality in which an offence was committed. It may have been on the borders of two counties, or the offence may have been begun in one county and completed in another ; or it may have been committed on the sea, or on a tidal river, or in a railway carriage, or in some other moving vehicle. Provisions exist for trying offences committed in circumstances which make the jurisdiction doubtful (see, for instance, sec. 13 of the Criminal Law Act, 1826 : secs. 113 and 114 of the Larceny Act, 1861 ; sec. 46 of the Summary Jurisdiction Act, 1879); but these

provisions merely avoid the difficulty without ascertaining where the offence was actually committed. In such cases the ordinary residence of the person who committed the offence may have to be looked for. The word residence has no definite technical meaning; its construction varies according to the object for which the residence is required. The residence of a young person or child, for the purposes of sec. 74 (3) of the Children Act, 1908, is where he actually lives (*Stoke-on-Trent Borough Council* v. *Cheshire County Council* (cited below), and if he lives with his parents or either of them it will be where they or he or she lives, and not where they only work or carry on business.

The following cases have been selected as indicating points to be considered in deciding what is the parent's place of residence in cases where there is doubt. Except in the last two, however, the residence in question had to be ascertained for poor law purposes. It is necessary to bear this in mind in considering whether the decision bears on facts arising under sec. 74 (3).

In *R.* v. *Norwood Overseers* (1867), 2 Q. B. 437, a surgeon who was required to board and lodge at a private lunatic asylum at Norwood where he was employed, married and took lodgings for his wife in the parish of St. Pancras, about eight miles away. For some years he visited her there nearly weekly, and often stayed with her from Saturday to Monday, but the rest of the week he remained at the asylum. Blackburn, J., said that although *primâ facie* a man's home is where his wife lives, and so he may be said to be resident there, yet he may be, as in this case, only a sojourner there or an occasional though regular visitor, and the Court held that looking at the circumstances of the case it was impossible to say that the man did not reside in the parish of Norwood; and if so that he did reside in the parish of St. Pancras where his wife lived.

On the other hand, in *Great Yarmouth Union* v. *Bethnal Green Union* (1907), 97 L. T. 440, 5 L. G. R. 1105; 71 J. P. 422; a night goods guard on the Great Eastern Railway was for over three years tenant of a house at Yarmouth, where his wife resided. He also rented a lodging at Bethnal Green and slept on alternate nights at Bethnal Green and at Yarmouth. The court held that he must be considered to have resided at Yarmouth.

A reservist, who resided with his wife and family in the Maidstone Union, was recalled to his regiment and sent to South Africa, where he remained six months and was then invalided home. It was held that his departure to South Africa broke his residence in the Maidstone Union although his wife and children remained there during his absence. (*Newark Union* v. *Maidstone Union* (1905), 3 L. G. R. 1005.)

Where an illegitimate young man went to a school for the indigent blind but stayed at the residence of his mother and her husband for five or six weeks in the summer of each year, and at the age of twenty-one was discharged from the school and lived for eight months with his mother and then became chargeable, it was held that his residence was with his mother and her husband. (*R.* v. *Abingdon*, L. R. 5, Q. B. 406; 39 L. J. M. C. 153; 23 L. T. 603; 18 W. R. 981.)

If a person leaves his place of residence to fulfil a contract and has no intention of returning unless events over which he has no control should occur, he breaks his former residence in that place. (*R.* v. *Stapleton*, 1 El. & Bl. 766; 22 L. J. M. C. 102.)

If he is only temporarily absent and intends to return after the contract is fulfilled, he does not break his residence. (*R.* v. *Brighton*, 4 El. & Bl. 236; 24 L. J. M. C. 41.)

But intention to return at a remote period, after a permanent

absence, does not prevent the absence from breaking the residence. (*Wellington* v. *Whitchurch*, 4 B. & S. 100; 32 L. J. M. C. 189; 8 L.T. 456; 11 W. R. 828.)

A domestic servant's place of residence is in the house in which she lives and is employed (*R.* v. *Whitby Union*, L. R. 5. Q. B. 325); and a charitable institution is the residence of those who work and are maintained there. (*Fulham Union* v. *Thanet Union*, 7 Q. B. D. 539.)

In *R.* v. *St. Leonard's, Shoreditch* (1865), 35 L. J. M. C. 48, a woman had lived for more than three years in lodgings in a parish, after which she was compelled to give them up. She then wandered about, sleeping one night on a doorstep in the parish and for twenty-one nights in a refuge in an adjoining parish, returning during the day to her own parish. The Court of Queen's Bench decided that she had not broken her residence. Cockburn, C.J., said (on page 49), there are, unhappily, people who are obliged to seek a necessary shelter in the open air, or under the dry arches of bridges. Such people have no other habitation, and sleep how they best can, and the parish of such habitation is then their place of residence, and for that purpose persons having their place of sleeping in the open air are precisely on the same footing as persons sleeping in a house or within walls.

In *Stoke-on-Trent Borough Council* v. *Cheshire County Council* (1915), 3 K.B. 699; 13 L. G. R. 1078), it was held by the King's Bench Division that the place of residence of a youthful offender in sec. 74 (7), of the Children Act, 1908, is the place where he actually resided. If he is not in fact living with his parents, he cannot, within the meaning of the sub-section, be considered as constructively residing with them.

In *Leicester County Borough Council* v. *Stoke-on-Trent County Borough Council*, 17 L. G. R. 172, a boy who lived with his parents at Hanley until he was fifteen years old, was sent, in consequence of his conduct, by the probation officer of Hanley to a Home at St. Helen's from which he was expelled, and he returned to his father's house. Subsequently the probation officer placed him for two years at the Church Army Home at Leicester, where he remained for six months, working at various places in the town. At the end of the six months he absconded from the Home and went to Coventry, then to Birmingham, where he obtained work for a few days. Then he left for Gloucester, but returned to Birmingham and lived there under an assumed name. From there he went to Stoke-on-Trent, where he was detained and taken to the workhouse, but he ran away and went back to Birmingham. There he was convicted of stealing and ordered to be detained in a certified reformatory school until he reached the age of nineteen. The order specified the boy's place of residence as being at his father's house at Hanley. On appeal by the Stoke-on-Trent Borough Council, under sec. 74 (7) of the Children Act, 1908, the Birmingham Stipendiary Magistrate, on evidence that the boy's place of residence was the Church Army Home at Leicester, transferred the liability of his maintenance to the Leicester Borough Council, and the King's Bench Division upheld the decision of the magistrate.

Sub-sec. (4).—As to the making a detention order and as to the court that makes it, see sec. 57. As to appeal against a decision of a court as to the place of residence of a youthful offender or child, see sub-sec. (7).

Sub-sec. (5).—As to the obligation referred to as imposed on the Local Education Authority, see sub-sec. (2). As to para. (*a*), see sec. 58 (4).—As to para. (*b*), see sec. 58 (5), and sec. 74 (11).—As to para. (*c*), see sec. 58 (1) (*b*).

Sub-sec. (6).—In a Scottish case it was held that in view of sec. 74 (6), of the Children Act, 1908, an order for the detention of a child

in a certified industrial school cannot be pronounced by the court until after the Local Education Authority has been given an opportunity of being heard. Lord Salveson thought that one of the objects of the sub-sec. was to enable the Local Education Authority to bring before the court facts regarding the child's school career, to assist it in determining whether a detention order should or should not be pronounced. (*A. B.* v. *Howman* (1917), S. C. (J.) 23.)

Sub-sec. (7).—The Common Council of the City of London is a local authority as regards youthful offenders and children committed by a petty sessional court acting in and for the city (sub-sec. 18).

Sub-sec. (8).—As to what is a certified school, see secs. 44 (1) and 45; as to who are managers of such a school, see sec. 44 (2). As to the expenses of the local authority, see sub-sec. (13) of this section. As to the requirement on the local authority to make provision, see sub-secs. (1) and (2). As to the expenses of providing, etc., a certified school, see sub-secs. (13) and (14) of this section; as to the purchase of land, see sub-sec. (12); and as to a combination of local authorities for the provision, see sec. (15).

Sub-sec. (9).—As to the disposal of inmates of certified schools, see sec. 70. As to inmates towards whose maintenance the local authority may voluntarily contribute, see sub-sec. (5) of sec. 74. As to expenses, see sub-sec. 13.

Sub-sec. (10).—As to the transfer of youthful offenders and children from one school to another, see secs. 69 and 71 (2), and 72 (2); as to expenses of maintenance, see sub-sec. 13 of sec. 74.

Sub-sec. (11).—As to refractory children sent to certified schools at the instance of poor law guardians and as to children of convicted parents, see sec. 58 (5), and sec. 74 (5) (*b*). The guardians of a poor law union may also be called upon to contribute in the circumstances mentioned in sec. 82 (3).

Sub-sec. (12).—As to the acquisition of land (*a*) for reformatory schools by the Council of a County, see sec. 65 of the Local Government Act, 1888; by the Council of a County Borough, see sec. 175 of the Public Health Act, 1875; (*b*), for industrial schools, see sec. 34 of the Education Act, 1918, post p. 395.

Sub-sec. (13).—As regards expenses of the kinds referred to in the sub-sec., see sec. 18 of the Education Act, 1902, and the notes thereto.

Sub-sec. (14).—As regards the borrowing of money, for industrial schools, see sec. 19 of the Education Act, 1902, and the note on p. 200.

Sub-sec. (15).—As regards the power to combine, see sec. 74 (8) (*b*). As regards the audit of the receipts and payments of Local Education Authorities, see sec. 18 (5), of the Education Act, 1902, and sec. 6 of the Education (Administrative Provisions) Act, 1907, and the notes to those sections.

Sub-sec. (16).—See sub-sec. (8) (*b*).

Sub-sec. (18).—As to local authorities who have powers and duties in relation to reformatory and industrial schools, see sub-sec. (7).

Contributions by Parents.

75.—(1.) The parent, or other person liable to maintain a youthful offender or child ordered to be sent to and detained in a certified school shall, if able to do so, contribute to his maintenance therein a sum not exceeding such sum as may be declared by Order in Council to represent approximately the average cost of maintenance of youthful offenders or

children in the class of school to which such school belongs in the locality in which such school is situate.

(2.)—(*a*) The court by which a detention order is made shall at the time of making that order, unless it considers that it is not in possession of the necessary information ; and

(*b*) any petty sessional court having jurdisdiction at the place where such parent or other person resides may, on complaint being made by or at the instance of the chief inspector of reformatory and industrial schools, at any time whilst the offender or child is detained in the school ;

make an order on such parent or other person for the payment to the chief inspector of such weekly sum, not exceeding such sum as aforesaid, as having regard to the ability of the parent or other person seems reasonable during the whole or any part of the time for which the offender or child is liable to be detained in the school :

Provided that the court making the detention order, if a court of assize or court of quarter sessions, may, if it thinks fit, remit the case to a court of summary jurisdiction for the place where the offender or child was committed for trial, for the purpose of making an order under this section, and upon the case being so remitted any such court of summary jurisdiction shall have power to make any such order under this section as the court which made the detention order might have made.

(3.) Every such order may specify the time during which the payment is to be made, or may direct the payment to be made until further order, and shall be enforceable as an order of affiliation.

(4.) Any order made under this section may, on application being made either by the person on whom the order is made or by or at the instance of the chief inspector and on fourteen days notice of such application being given to the chief inspector or person on whom the order was made, be varied by any court which would have had power to make the order.

(5.) An order made under this section shall be binding on the person on whom it is made :

Provided that if that person was not summoned to attend the sitting of the court at which the order was made, the order shall be served on him in manner prescribed by rules of court, and shall be binding on him unless he makes an application against it within the time prescribed by rules of court to the court by which the order was made or any court of like jurisdiction on the ground either that he is not liable to maintain the offender or child, or that he is unable to contribute the sum specified in the order, and on any such application being made the court may confirm the order with or without modifications or may rescind it.

(6.) Where a parent or other person has been ordered under this section to contribute to the maintenance of a youthful offender or child, he shall give notice of any change of address to the chief inspector of reformatory and industrial schools, and, if he fails to do so without reasonable excuse, he shall be liable on summary conviction to a fine not exceeding two pounds.

(7.) All sums received under this section shall be paid into the Exchequer, but, if the amount received in respect of any child in an industrial school exceeds the contribution from the Treasury in respect of that child, the excess shall be paid to the managers of the school and shall not be paid into the Exchequer.

(8.) The Secretary of State may in his discretion remit wholly or partially any payment ordered to be made under this section.

(9.) It shall be the duty of a constable, if so required by the chief inspector of reformatory and industrial schools, to take proceedings under this section on behalf of the chief inspector.

(10.) Where there is some person, other than the parent, liable to maintain a youthful offender or child, an order under this section may be made on that person notwithstanding that there may be also a parent.

(11.) Any court making an order under this section for contribution by a parent or other such person may, in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income to be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-named person.

Note 75.—*Sub-sec.* (1).—The Chief Inspector is the person appointed by the Secretary of State under sec. 46 of this Act.

By an Order in Council dated 2nd April, 1909 (S.R.O. 1909—No. 344), it was declared that the sums shown in the following table represent approximately the average cost of maintenance of youthful offenders or children in the classes of schools, and in the localities therein mentioned; and ordered that the sums which the parent or other person may be ordered to contribute under sec. 75 of the Children Act, 1908, shall not exceed the sums so shown :—

Reformatory Schools.

	England and Wales. per week.	Scotland. per week.
	s. d.	s. d.
Town Schools and Ships :		
Boys	8 0 ..	.. 7 0
Girls	7 0 ..	.. 6 6
County Schools	7 0 ..	.. 6 6

Industrial Schools.

	England and Wales. per week. s. d.	Scotland. per week. s. d.
Schools in County of London	8 0	—
Ship Schools	7 6	7 0
Other Schools:		
Boys	7 0	6 6
Girls	6 6	6 0

Expressions used in this Order have the same meaning as in the Children Act, 1908.

Sub-sec. (3).—As to the enforcement of an order of affiliation by distress and commitment, see the Bastardy Laws Amendment Act, 1872, sec. 4, as amended by sec. 32 (2), of the Criminal Justice Administration Act, 1914, and the Bastardy Laws Amendment Act, 1873, sec. 7, and sec. 4 of the Criminal Justice Administration Act, 1914; also *Grocock* v. *Grocock* (1919), 35 T. L. R. 509.

Sub-sec. (5).—Rules have been prescribed: see the Summary Jurisdiction (Children Act) Rules, 1909.

Sub-sec. (6).—The address of the Chief Inspector of Reformatory and Industrial Schools is Home Office, Whitehall, London, S.W. 1.

Sub-sec. (7).—As to the contribution by the Treasury, see sec. 73.

Sub-sec. (9).—See sub-secs. (4) and (6).

Sub-sec. (10).—As to the persons liable to maintain youthful offenders and children, see sec. 125, p. 320.

Sec. 75, in its application to day industrial schools, is modified by sec. XII. of the Order in Council of 2nd April, 1909 (p. 330).

Expenses of Conveyance and Clothing.

76.—(1.) The expense of conveying to any certified reformatory school any youthful offender who has been directed to be detained in such a school, and the expense of proper clothing for him requisite for his admission to the school, shall be defrayed out of moneys provided by Parliament.

(2.) The expense of conveying to a certified industrial school a child ordered to be sent there shall be defrayed by the police authority by whom he is conveyed, and shall be deemed part of the current expenses of that authority;

Provided that, where a child is committed to a certified industrial school at the instance of a Local Education Authority, the authority may pay the expenses of and incidental to the conveyance of the child to and from the school, and the sending of the child out on licence or bringing back the child on the revocation or forfeiture of a licence.

Note 76.—As to conveyance of youthful offenders and children to certified schools, see sec. 64. As to the police authority, see sec. 131. As to moneys provided by Parliament, see sec. 73. As to placing out on licence and bringing back on forfeiture or revocation of the licence, see sec. 67. As to the expenses of local authorities, see sec. 74 (13).

Day Industrial Schools.

Establishment, &c., of Day Industrial Schools.

77.—(1.) If the Secretary of State is satisfied that, owing to the circumstances of any class of population in the area of any Local Education Authority, a school in which industrial training, elementary education, and one or more meals a day, but not lodging, are provided is necessary or expedient for the proper training and control of the children of that class, he may, on the like application and report as is required by this Part of this Act in the case of industrial schools, certify any such school (in this Act referred to as a day industrial school) as fit for the reception of children to be sent there in pursuance of the provisions of this Part of this Act relating to day industrial schools.

(2.) A certified day industrial school shall be deemed to be a certified efficient school within the meaning of the Elementary Education Act, 1876.

(3.) A school shall not at the same time be a day industrial school and a reformatory or industrial school.

(4.) If the Secretary of State is of opinion that, by reason of a change of circumstances or otherwise, a certified day industrial school ceases to be necessary or expedient for the proper training and control of the children of any class of population in the neighbourhood of that school, he may, after due notice, withdraw the certificate of the school, and thereupon the school shall cease to be a certified day industrial school.

Note 77.—As to the application and report required in the case of industrial schools before they are certified by the Secretary of State, see sec. 45.

As to what is a certified efficient school within the meaning of the Elementary Education Act, 1876, see sec. 48 of that Act, on p. 100.

As to the application of this Act to day industrial schools, see sec. 83, and the Order in Council of the 2nd April, 1909, applying certain provisions of the Act to such schools, p. 324.

Power to send Children to Day Industrial Schools.

78.—(1.) Any child authorised by this Part of this Act to be sent to a certified industrial school may, if the court before which the child is brought thinks it expedient, be sent to a certified day industrial school.

(2.) Any child sent to a certified day industrial school by an order of a court (other than an attendance order) may during the period specified in the order be there detained during such hours as may be authorised by the rules of the school approved by the Secretary of State.

(3.) The school must be within such distance of the residence of the child as may be prescribed by Order in Council under this Part of this Act, but need not be situate within the jurisdiction of the court making the order.

Note 78.—As to the children liable to be sent to certified industrial schools who may under this section be sent to certified day industrial schools, see sec. 58.

The attendance order referred to is made under sec. 11 of the Education Act, 1876. See also secs. 12 and 13 and the notes to sec. 13, p. 94.

As to the distance of the school (two and a half miles) from the residence of the child, see Article X of the Order in Council of 2nd April, 1909 (p. 329).

Reception of Child under Attendance Order or without Order.

79. The managers of a certified day industrial school may, upon the request of a Local Education Authority and of the parent or guardian of, or other person legally liable to maintain, a child, and upon the undertaking of the parent, guardian, or other person to pay towards the industrial training and meals of the child such sum as the Secretary of State may authorise, receive the child into the school under an attendance order or without an order of a court.

Note 79.—The managers of a school are defined in sec. 44 (2), as the persons for the time being having the management of the school. The attendance order referred to is an order made under sec. 11 of the Education Act, 1876 (see p. 85).

Sec. 79 must be read with Art. X. of the Order in Council of 2nd April, 1909 (p. 329).

The following regulations as to parental contribution under this section were made by the Secretary of State on the 29th March, 1909 (S.R.O., 1909, No. 328).

1. In the case of a child sent to a Certified Day Industrial School under an Attendance Order or without an Order of Court, the sum which his parent shall undertake to pay towards the industrial training and meals of such child shall be such sum as may be agreed upon between the parent of the child and the Managers of the School, not exceeding the following sums :—

	s.	*d.*	
Schools in London, Leeds, and Bristol ..	2	0	a week
Schools in other towns in England	1	9	„

2. The attendance of a child at a Certified Day Industrial School shall not be reckoned unless it includes at least three hours of secular instruction.

3. The regulations made by the Secretary of State for the Home Department on the same subject, on the 4th January, 1878, are hereby cancelled.

Contributions by the Treasury.

80. There shall be paid out of money provided by Parliament towards the custody, industrial training, elementary education, and meals of children sent to a day industrial school such sums, on such conditions, as the Secretary of State, with the approval of the Treasury, may recommend :

Provided that—

(*a*) the conditions of a parliamentary contribution to a day industrial school shall provide that the

education given in the school shall be on such level of efficiency as would enable the school, if a public elementary school, to obtain a parliamentary grant;

(*b*) any conditions recommended by the Secretary of State for the purposes of contributions to a day industrial school shall be laid before Parliament in the same manner as minutes of the Board of Education relating to the annual parliamentary grant.

Note 80.—The recommendations of the Secretary of State as approved by the Treasury are set out in an order dated 22nd March, 1909.

Under the proviso to sec. 97 of the Education Act, 1870, minutes of the Board of Education relating to the annual parliamentary grant were not deemed to be in force until they had lain for one month on the table of both Houses of Parliament. That proviso was repealed by the Education Act, 1918, and the procedure which now applies is contained in sec. 44 of the latter Act. The regulations of the Board of Education for the payment of grants are to be laid before Parliament as soon as may be after they are made. The Rules Publication Act, 1893, applies to them and they have to be made in accordance with the requirement of that Act. Similar procedure has now to be observed by the Secretary of State in making "recommendations" under sec. 80 of the Children Act, 1908.

Powers of Local Education Authorities.

81. A Local Education Authority shall have the same powers in relation to a certified day industrial school as they have in relation to a certified industrial school, but nothing in this Act shall be construed as imposing on any such authority an obligation to provide for the reception and maintenance of a child in a certified day industrial school.

Note 81.—The powers and duties of local authorities in regard to certified industrial schools are contained in sec. 74 above: see especially sub-secs. (2), (8) and 9. A local authority is bound to provide for the reception and maintenance of a child who is ordered to be sent to a certified industrial school (sec. 74 (2)). It is not bound to provide for the reception and maintenance of a child ordered by the court to be sent to a certified day industrial school; but it has the power to do so.

Contributions by Parents.

82.—(1.) Where a court orders a child to be sent to a certified day industrial school, the court shall also order the parent of the child, or other person liable to maintain him, to contribute to his industrial training and meals in the school such sum as is named in the order, not exceeding such sum as may be declared by Order in Council to represent approximately the average cost of industrial training and meals in day industrial schools in the locality in which the school to which the child is sent is situate.

(2.) It shall be the duty of the Local Education Authority to obtain and enforce the order, and every sum paid under the order shall be paid over to the Local Education Authority in aid of their expenses for elementary education under the Education Acts, 1870 to 1907.

(3.) If a parent or other person is unable to pay the sum required by the order to be paid, he shall apply to the guardians of the poor law union comprising the parish in which the parent or other person is resident, who, if satisfied of such inability, shall give the parent or other person sufficient relief to pay the sum, or so much thereof as they consider him unable to pay.

Note 82.—As to the persons liable under this Act to maintain a child, see sec. 125.

The expenses of the Local Education Authority for elementary education are governed by sec. 18 of the Education Act, 1902. Art. XI. of the Order in Council of 2nd April, 1909, specifies the average cost of industrial training in the localities there mentioned (p. 330).

Application to Day Industrial Schools of Provisions relating to Industrial Schools.

83. The provisions of this Part of this Act with respect to industrial schools shall, so far as applicable, apply to certified day industrial schools, subject to such modifications as are made therein by this Part of this Act: Provided that His Majesty may by Order in Council make such further modifications of those provisions as may appear to His Majesty to be necessary or proper for adapting those provisions to day industrial schools, and any such Order may provide that a child may be punished for an offence by being sent to a certified industrial school in lieu of a certified reformatory school, or may otherwise mitigate any punishment imposed by the provisions of this Part of this Act in relation to industrial schools.

Note 83.—An Order in Council applying certain provisions of this Act to certified day industrial schools was issued on the 2nd April, 1909: see p. 324.

SUPPLEMENTAL PROVISIONS.

Power to send Offenders Conditionally Pardoned to Reformatory Schools.

84. Where a youthful offender has been sentenced to imprisonment or penal servitude, and has been pardoned by His Majesty on condition of his placing himself under the care of some charitable institution for the reception and reformation of youthful offenders, the Secretary of State may direct him, if under the age of sixteen years, to be sent to a certified reformatory school, the managers of which consent to receive

him, for a period of not less than three and not more than five years, but not in any case extending beyond the time when he will in the opinion of the Secretary of State attain the age of nineteen years; and thereupon the offender shall be subject to all the provisions of this Part of this Act as if he had been originally sentenced to detention in a certified reformatory school.

Note 84.—As to cases in which detention may be enforced after the offender has reached the age of nineteen years, see secs. 71 (3), and 72 (5) above.

Powers of School Officers.

85. Every officer authorised by the managers of a certified school or by a Local Education Authority to take charge of any youthful offender or child ordered to be detained under this Part of this Act for the purpose of conveying him to or from the school, or of apprehending and bringing him back to the school in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protection, and privileges of a constable.

Advertisement of Grant, &c., of Certificate.

86. A notice of the grant of a certificate to a reformatory or industrial school, or of withdrawal or resignation of such a certificate, shall within one month be advertised by order of the Secretary of State in the London Gazette.

Orders and Notices.

87.—(1.) An order or other act of the Secretary of State under this Part of this Act may be signified under the hand of the Secretary of State or of an under-secretary.

(2.) An order or other act of managers of a certified school under this Part of this Act may be signified under the hands of the managers or their secretary or clerk.

(3.) Any notice may be served on the managers of a certified school by being delivered personally to any one of them, or by being sent by post or otherwise, in a letter addressed to them or any of them at the school, or at the usual or last known place of abode of any of the managers or of their secretary or clerk, except where the managers are a local authority, in which case any notice may be so served on the clerk of the authority.

(4.) No summons issued, notice given, or order made for the purpose of carrying into effect the provisions of this Part of this Act shall be invalidated for want of form only.

(5.) The Secretary of State may prescribe forms to be used for the purposes of this Part of this Act otherwise than for the purpose of legal proceedings thereunder.

Rules Respecting Evidence of Documents.

88.—(1.) The production of the London Gazette containing a notice of the grant, or of the withdrawal or resignation, of a certificate to a certified school shall be sufficient evidence of the fact of a certificate having been duly granted to the school named in the notice, or of the withdrawal or resignation of such a certificate.

(2.) The grant of a certificate to a certified school may also be proved by the production of the certificate itself, or of a document purporting to be a copy of the certificate and to be attested as such by the chief inspector of reformatory and industrial schools.

(3.) A certificate purporting to be signed by one of the managers of a certified school, or by their secretary or clerk, or by the superintendent or other person in charge of the school, to the effect that the youthful offender or child therein named was duly received into, and is at the date of the signing thereof detained in, the school, or has been otherwise dealt with according to law, shall be evidence of the matters therein stated.

(4.) An instrument purporting to be an order of a court under this Part of this Act and to be signed by the members of the court which made the order, or purporting to be a copy of such an order, and to be certified as such a copy by the clerk to that court, shall be evidence of the order.

(5.) A copy of rules purporting to be the rules of a certified school, and to be signed by the chief inspector of reformatory and industrial schools, shall be evidence of the rules of that school.

(6.) A certificate purporting to be under the hand of the chief inspector or an inspector or assistant inspector of reformatory and industrial schools, stating that any sum due from a parent or other person for the maintenance of a child or young person is overdue and unpaid, shall be evidence of the facts stated therein.

(7.) A school to which any youthful offender or child is directed to be sent in pursuance of this Part of this Act shall, until the contrary is proved, be deemed to be a certified school.

Note 88.—Sec. 88 (6), in its application to day industrial schools, is modified by Art. XIII. of the Order in Council of 2nd April, 1909 (p. 331).

Liability to Removal.

89. The time during which a child is detained in a certified school under this Part of this Act shall for all purposes be excluded in the computation of time mentioned in section one of the Poor Removal Act, 1846, as amended by any subsequent enactment.

Note 89.—This means that the time during which a child is detained in a certified school must be excluded in computing the period of one year's residence in a parish or union which is necessary to give to a person a status of irremovability from the parish or union under the Poor Law Acts. Sec. 1 of the Poor Removal Act, 1846, fixed the period of residence to secure the status of irremovability at five years, but sec. 1 of the Act has been amended by subsequent Acts and the period now is one year.

Application to Schools under Local Acts.

90. This Part of this Act shall apply to any reformatory or industrial school established under any Local Act passed before the commencement of this Act, subject to the following modifications :——

(1.) The superintendent of the school shall be substituted for the chief inspector of reformatory and industrial schools as the person to whom notice of any change of address of a parent or other person against whom a contribution order has been made is to be given :

(2.) A certificate purporting to be under the hand of the superintendent or other officer of the school specially authorised by the managers for that purpose, stating that any sum due from a parent or other person for the maintenance of a youthful offender or child is overdue and unpaid, shall be evidence of the facts stated therein.

Tenure of Office by Certain Officers and Servants of the London County Council.

91. Notwithstanding the repeal by this Act of the Middlesex Industrial Schools Acts the officers and servants appointed under those Acts who became at the passing of the Local Government Act, 1888, officers and servants of the London County Council, and who held office at the passing of this Act, shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed, and while performing the same duties shall receive not less salaries or remuneration, and be entitled to not less pensions (if any), than they would have if this Act had not passed.

Application of Part IV.

92. The provisions of this Part of this Act with respect to youthful offenders and children detained in certified schools, except such as impose obligations on local authorities with respect to their maintenance, shall apply to youthful offenders and children detained in certified schools at the commencement of this Act in pursuance of any enactment repealed by this Act in like manner as if they were so detained in pursuance of this Act, but nothing in this Act shall affect any obligation

undertaken by, or liability imposed on, any local authority before the commencement of this Act with respect to any such youthful offender or child, or prevent any local authority from continuing to make any contribution which they were making before the commencement of this Act.

Provisions as to the Isle of Man and Channel Islands.

93.—(1.) Where, under any law of the Isle of Man or any of the Channel Islands, it is lawful to sentence a young person to be sent to a reformatory or industrial school in Great Britain, and provision is made under any such law to the satisfaction of the Secretary of State—

(i.) For the expenses of the conveyance of such young person to the school to which he is sent, and for his reconveyance on his discharge from such school to the Isle of Man or the Channel Isands as the case may be ; and

(ii.) For the expenses of the maintenance of such young person at such school ; and

(iii.) For the contribution (if any) to be made by the parent or person legally liable to maintain the child so sent, and the mode in which such contribution is to be raised ;

the Government of the Isle of Man, with the assent of the Secretary of State and with the approval of the Tynwald Court, or the Government of any of the Channel Islands, as the case may be, may contract with the managers of any reformatory or industrial school in Great Britain for the reception of young persons sentenced to be sent to any such school by justices or a court in the Isle of Man or the Channel Islands.

(2.) A young person sentenced as aforesaid in the Isle of Man or the Channel Islands to be sent to a reformatory or industrial school in Great Britain may be conveyed in the custody of any constable or other person acting under a warrant issued by any competent justices or court in the Isle of Man or the Channel Islands, as the case may be, to the school to which he is sentenced to be sent, and he shall during his conveyance to that school be deemed to be in legal custody, both on sea and on land, and when delivered up to the managers of the school to which he is sent he may thenceforth be dealt with in the same manner and be subject to this Part of this Act in the same way as if he had been sent to such school by a court in the United Kingdom.

(3.) In the construction of this section, as respects the Isle of Man, the expression "justices" means two justices or a high bailiff sitting as a court of summary jurisdiction, and the expression "a court" means the court of general gaol delivery, or a judge of the High Court of Justice of the Isle of Man.

In the construction of this Part of this Act for the purposes of this section—

The expressions "youthful offender" and "child" include young persons;

The expressions "court of assize," "court of quarter sessions," "circuit court of justiciary," "sheriff," mean, as respects the Isle of Man, the court of general gaol delivery, or a judge of the High Court of Justice of the Isle of Man;

The expressions "sentence" and "sentenced" include "order" and "ordered."

PART V.

Juvenile Offenders.

. . . . . .

PART VI.

Miscellaneous and General.

Penalty on Vagrants Preventing Children Receiving Education.

118.—(1.) If a person habitually wanders from place to place and takes with him any child above the age of five, he shall, unless he proves that the child is totally exempted from school attendance or that the child is not by being so taken with him prevented from receiving efficient elementary education, be liable on summary conviction to a fine not exceeding with costs twenty shillings, and shall, for the purposes of the provisions of this Act relating to the descriptions of children who may be sent to a certified industrial school, be deemed not to be exercising proper guardianship over the child:

Provided that this provision shall not apply to a child in a canal boat for whose education provision is made under the Canal Boats Act, 1877, as amended by any subsequent enactment.

(2.) Any constable who finds a person wandering from place to place and taking a child with him may, if he has reasonable ground for believing that the person is guilty of an offence under this section, apprehend him without a warrant, and may take the child to a place of safety in accordance with the provisions of Part II. of this Act, and that Part shall apply accordingly as if an offence under this section were an offence under that Part.

(3.) Without prejudice to the requirements of the Education Acts, 1870 to 1907, as to school attendance or to proceedings thereunder, this section shall not apply during the months of April to September, inclusive, to any child whose parent or guardian is engaged in a trade or business of such a nature as to require him to travel from place to place, and who has obtained a certificate of having made not less than two hundred attendances at a public elementary school during the months of October to March immediately preceding, and the power of the Board of Education to make regulations with respect to the issue of certificates of due attendance for the purposes of the Education Acts, 1870 to 1907, shall include a power to make regulations as to the issue of certificates of attendance for the purposes of this section.

Note 118.—The effect of sub-sec. (1) is to enable the vagrant to be fined, and the child to be sent to a certified industrial school under sec. 58; see sec. 58 (1) (*b*).

See the provisions of the Canal Boats Act, 1877, in the Appendix, p. 567.

Sub-sec. (3) enables children to be absent from school, in the circumstances mentioned in this sub-section, during the season of fruit and hop picking. Regulations as to Certificates of School Attendance under this section were made by the Board of Education on 20th April, 1909. [Stat. Rules and Orders, 1909, No. 534.] They require L.E.A.s to keep a stock of forms for the use of persons entitled to apply to the Authority under sub-sec. (3).

Cleansing of Verminous Children.

122.—(1.) A Local Education Authority may direct their medical officer, or any person provided with and, if required, exhibiting the authority in writing of their medical officer, to examine in any public elementary school provided or maintained by the authority the person and clothing of any child attending the school, and, if on examination the medical officer, or any such authorised person as aforesaid, is of opinion that the person or clothing of any such child is infested with vermin or is in a foul or filthy condition, the Local Education Authority may give notice in writing to the parent or guardian of, or other person liable to maintain, the child, requiring him to cleanse properly the person and clothing of the child within twenty-four hours after the receipt of the notice.

(2.) If the person to whom any such notice as aforesaid is given fails to comply therewith within such twenty-four hours, the medical officer, or some person provided with and, if required, exhibiting the authority in writing of the medical officer, may remove the child referred to in the notice from any such school, and may cause the person and clothing of the child to be properly cleansed in suitable premises and with

suitable appliances, and may, if necessary for that purpose, without any warrant other than this section, convey to such premises and there detain the child until the cleansing is effected.

(3.) Where any sanitary authority within the district of a Local Education Authority have provided, or are entitled to the use of, any premises or appliances for cleansing the person or clothing of persons infested with vermin, the sanitary authority shall, if so required by the Local Education Authority, allow the Local Education Authority to use such premises and appliances for the purpose of this section upon such payment (if any) as may be agreed between them or, in default of agreement, settled by the Local Government Board.

(4.) Where, after the person or clothing of a child has been cleansed by a Local Education Authority under this section, the parent or guardian of, or other person liable to maintain, the child allows him to get into such a condition that it is again necessary to proceed under this section, the parent, guardian, or other person shall, on summary conviction, be liable to a fine not exceeding ten shillings.

(5.) Where a Local Education Authority give notice under this section to the parent or guardian of, or other person liable to maintain, a child, requiring him to cleanse the person and clothing of the child, the authority shall also furnish him with written instructions describing the manner in which the cleansing may best be effected.

(6.) The examination and cleansing of girls under this section shall only be effected by a duly qualified medical practitioner or by a woman duly authorised as herein-before provided.

(7.) For the purposes of this section "medical officer" means any officer appointed for the purpose of section thirteen of the Education (Administrative Provisions) Act, 1907.

Note 122.—By the Cleansing of Persons Act, 1897, local authorities were empowered to permit any person who should apply to the authority on the ground that he is infested with vermin, to have the use free of charge, of the apparatus (if any) which the authority possess for cleansing the person and his clothing from vermin. They were also empowered to expend any reasonable sum on buildings, appliances and attendants required for carrying out the Act. Boards of guardians were included within the definition of "local authority," for the purposes of the Act of 1897; but the requirement of sec. 122 (3) of the Children Act is limited to sanitary authorities, and therefore the Local Education Authority cannot claim to use for cleansing purposes, the premises and appliances of a board of guardians.

The Minister of Health is for the time being substituted for the Local Government Board, for the purpose of making the settlement referred to in sub-sec. (3) of the above section: See the Ministry of Health Act, 1919.

GENERAL.

Presumption and Determination of Age.

123.—(1.) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it is of the age of sixteen years or upwards, that person shall for the purposes of this Act be deemed not to be a child or young person.

(2.) Where in a charge or indictment for an offence under this Act, or any of the offences mentioned in the First Schedule to this Act, except an offence under the Criminal Law Amendment Act, 1885, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or above any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or above the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or above that age, as the case may be, unless the contrary is proved.

(3.) Where in any charge or indictment for an offence under this Act or any of the offences mentioned in the First Schedule to this Act it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

(4.) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age it shall be a defence to prove that the person was actually of or over that age.

Provision as to Contribution Orders.

125. The persons liable to maintain a youthful offender, young person, or child, against whom an order to contribute

to the maintenance of the youthful offender, young person, or child may be made under this Act shall include his stepparent, and, if the court having cognizance of the case thinks fit, a person cohabiting with his mother, whether or not the person so cohabiting is his putative father, and in the case of illegitimacy his putative father:

Provided that where the youthful offender, young person, or child is illegitimate and an affiliation order for his maintenance has previously been made on the application of his mother under the enactments relating to bastardy, the court shall not (unless in view of the special circumstances of the case the court thinks it desirable) make an order for contribution against the putative father, but may order the whole or any part of the payments accruing due under the affiliation order to be made to the chief inspector of reformatory and industrial schools or such other person as may be named in the order, to be applied by him towards the maintenance of the youthful offender, young person, or child.

Reception and Maintenance of Children and Young Persons in Workhouses.

126. Boards of Guardians shall provide for the reception of children and young persons brought to a workhouse in pursuance of this Act, and, where the place to which under this Act a child or young person is authorised to be taken is a workhouse, the master shall receive the child or young person into the workhouse if there is suitable accommodation therein, and any expenses incurred in respect of the child or young person shall be paid out of the common fund.

Amendment of 42 & 43 *Vict., c.* 49.

128.—(1.) In the definitions of "child and "young person" in the Summary Jurisdiction Act, 1879, "fourteen years" shall be substituted for "twelve years."

(2.) The First Schedule to the Summary Jurisdiction Act, 1879, shall include the offence mentioned in the Second Schedule to this Act in the same manner as if that schedule formed part of the First Schedule to the Summary Jurisdiction Act, 1879:

Provided that where a court of summary jurisdiction deals with such an offence summarily under section twelve of that Act the maximum term of imprisonment which the court may inflict shall be six instead of three months.

Application of Summary Jurisdiction Acts.

129. All orders of a court of summary jurisdiction, whether a petty sessional court or not, under this Act shall be made,

and all proceedings in relation to any such orders shall be taken, in manner provided by the Summary Jurisdiction Acts, and the power of making rules under section twenty-nine of the Summary Jurisdiction Act, 1879, shall extend to making rules for regulating the procedure of courts of summary jurisdiction under this Act and matters incidental thereto.

Variation of Orders in Council.

130. An Order in Council under this Act may be revoked or varied by any subsequent Order in Council.

General Definitions.

131. For the purposes of this Act unless the context otherwise requires—

The expression "child" means a person under the age of fourteen years;

The expression "young person" means a person who is fourteen years of age or upwards and under the age of sixteen years;

The expression "guardian" in relation to a child, young person, or youthful offender, includes any person who, in the opinion of the court having cognizance of any case in relation to the child, young person, or youthful offender, or in which the child, young person, or youthful offender is concerned, has for the time being the charge of or control over the child, young person, or youthful offender;

The expression "legal guardian," in relation to an infant, child, young person, or youthful offender, means a person appointed, according to law, to be his guardian by deed or will, or by an order of a court of competent jurisdiction;

The expression "place of safety" means any workhouse or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive an infant, child, or young person;

The expression "common council," means the mayor, aldermen, and commons of the city of London in common council assembled;

The expression "Local Education Authority" means a Local Education Authority for the purpose of Part III. of the Education Act, 1902 (*see p.* 123);

The expressions "police authority" and "police fund" as respects the City of London mean the Common Council and the fund out of which the expenses of the city police are defrayed, and elsewhere have the same meanings as in the Police Act, 1890;

The expression "common fund" means, as respects a poor law union consisting of a single parish, the poor rate of that parish;

The expression "street" includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not;

The expression "public place" includes any public park, garden, sea beach, or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

The expression "intoxicating liquor" means any fermented, distilled, or spirituous liquor which cannot according to any law for the time being in force be legally sold without a licence from the Commissioners of Inland Revenue.

DAY INDUSTRIAL SCHOOLS.

Order in Council applying certain provisions of the Children Act, 1908 (8 Edw. 7, c. 67) to Certified Day Industrial Schools.

Statutory Rules and Orders, 1909. *No.* 342.

At the Court at St. James's, the 2nd day of April, 1909.

Present:

His Royal Highness the Prince of Wales.
Lord President. Lord Haversham.
Lord Steward. Lord Pentland.

Whereas His Majesty was pleased, by His Commission dated the second day of March, One thousand nine hundred and nine, to nominate and appoint His Royal Highness the Prince of Wales, in His Majesty's Absence from His Realm in Foreign Parts, to hold on His Majesty's behalf His Privy Council, and to signify thereat His approval of any matter or thing whereunto His Royal Highness should be so authorised by writing under His Majesty's Sign Manual, and to do further on His Majesty's behalf any matter or thing for the purposes of the said Commission whereunto His Royal Highness should be authorised in manner aforesaid:

And whereas by section 83 of the Children Act, 1908 (in this Order referred to as the Children Act), it is enacted as follows:—

. . . . . .

Now, therefore, His Royal Highness the Prince of Wales, being authorised thereto by writing under His Majesty's Sign Manual, and in pursuance of the above-mentioned Act, doth hereby, by and with the advice of His Majesty's Privy Council, on behalf of His Majesty, order that the following provisions shall apply to certified day industrial schools:—

Effect of Withdrawal or Resignation of Certificate.

I. Section 49 of the Children Act (p. 278) shall, in its application to day industrial schools, take effect with modifications as follows:—

A child shall not be received into a certified day industrial school in pursuance of the Children Act after the date of the receipt by the managers of the school of a notice of withdrawal

of the certificate for the school or after the date of a notice of resignation of the certificate; but the obligation hereinafter mentioned of the managers to provide with industrial training, elementary education, and one or more meals a day, any children detained in or attending the school at the respective dates aforesaid shall, except so far as the Secretary of State otherwise directs, continue until the withdrawal or resignation of the certificate takes effect, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the children detained in the school, whichever may first happen: Provided that when a child is received in pursuance of section 79 under an attendance order, or without an order, the obligation of the managers shall be suspended if and so long as the parent fails to carry out the undertaking entered into by him.

Liabilities of Managers.

II. Section 52 of the Children Act (p. 279) shall, in its application to day industrial schools, take effect with modifications as follows:—

The managers of a certified day industrial school may decline to receive any child proposed to be sent to them in pursuance of the Children Act, but when they have once accepted any such child they shall be deemed to have undertaken to provide him with industrial training, elementary education, and one or more meals a day during the whole period for which he is liable to be detained in or to attend the school, or until the withdrawal or resignation of the certificate for the school or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the children detained in the school, whichever may first happen: Provided that when a child is received in pursuance of section 79 under an attendance order, or without an order, the undertaking of the managers shall be suspended if and so long as the parent fails to carry out the undertaking entered into by him.

Choice of School.

III. Section 62 of the Children Act (p. 288) shall, in its application to day industrial schools, take effect with modifications as follows:—

The day industrial school to which a child is to be sent under a detention order shall be such school as may be specified in the order, being some certified day industrial school (whether situate within the jurisdiction of the court making the order or not) the managers of which are willing to receive the child, and which is within two and a half miles of the residence of the child.

Provided that, if it is found impossible to specify the school in the detention order, the school shall be such as a justice having jurisdiction in the place where the court which made the order sat may by endorsement on the detention order direct.

Period of Detention.

IV. Section 65 of the Children Act (p. 289) shall, in its application to day industrial schools, take effect with modifications as follows :—

The detention order shall specify the time for which the child is to be detained in the school, being such time as to the court may seem proper for the teaching and training of the child, but not in any case extending beyond the [end of the school term in which]* the child will, in the opinion of the court, attain the age of fourteen years.

V. Section 66 of the Children Act (p. 290) shall, in its application to day industrial schools, take effect with modifications as follows :—

(1.) The court or justice, in determining the school to which a child is to be sent, whether under a detention order or an attendance order, shall endeavour to ascertain the religious persuasion to which the child belongs, and the order shall, where practicable, specify the religious persuasion to which the child appears to belong, and a school conducted in accordance with that persuasion shall, where practicable, be selected.

(2.) A minister of the religious persuasion specified in the order of the court as that to which a child sent to a school appears to belong, or specified in the undertaking of the parent, may visit the child at the school on such days, at such times, and on such conditions, as may be fixed by the Secretary of State, for the purpose of affording him religious assistance and also for the purpose of instructing him in the principles of his religion.

(3.) Where an order has been made for sending a child to a school which is not conducted in accordance with the religious persuasion to which the child belongs, the parent, legal guardian, nearest adult relative, or person entitled to the custody of the child may apply to a petty sessional court acting in and for the place in and for which the court which made the order acted, to remove or send the child to a certified day industrial school, within two and a half miles of the residence of the child, conducted in accordance with the child's religious persuasion, and the court shall, on proof of the child's religious persuasion, comply with the request of the applicant :

* The words in brackets were substituted for the words "time when" by Order in Council, dated 8th May, 1919 (S.R.O., 1919, No. 673).

Provided that—

(i.) the application must be made before the child has been sent to a certified day industrial school, or within thirty days after his arrival at the school; and

(ii.) the applicant must show to the satisfaction of the court that the managers of the school named by him are willing to receive the child;

(iii.) nothing in this section shall be construed as preventing any such person as aforesaid from making an application to the Secretary of State after the expiration of the said period of thirty days to exercise the powers of transfer conferred on him by the other provisions of the Children Act.

Placing out on Licence.

VI. Section 67 of the Children Act (p. 291) shall, in its application to day industrial schools, take effect with modifications as follows:—

(1.) Where a child is sent to a certified day industrial school under a detention order, the managers of the school may at any time give him a licence exempting him from attendance at such school, but conditionally on his attending as a day scholar, in accordance with the bye-laws in force in the place where he resides, some school named in the licence, being a certified efficient school within the meaning of the Elementary Education Act, 1876.

(2.) Any licence so granted shall be in force until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3.) The managers of the school may at any time by order in writing revoke any such licence, and order the child to return to the school.

(4.) Any child refusing to return to the school when required to do so on the revocation or forfeiture of his licence, shall be liable to the same penalty as if he had wilfully neglected to attend the day industrial school.

(5.) The time during which a child is absent from a day industrial school in pursuance of a licence under this section shall be deemed to be part of the time of his detention in the school: Provided that, where a child has failed to return to the school on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the school.

(6.) Where a licence has been revoked or forfeited and the child refuses or fails to return to a school, a court of summary jurisdiction, if satisfied by information on oath that there

is reasonable ground for believing that his parent or guardian could produce the child, may issue a summons requiring the parent or guardian to attend at the court on such day as may be specified in the summons, and to produce the child, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of Part IV. of the Children Act, be liable on summary conviction to a fine not exceeding one pound.

Discharge and Transfer.

VII. Section 69 of the Children Act (p. 294) shall, in its application to day industrial schools, take effect with modifications as follows :—

(1.) The Secretary of State may at any time order a child to be discharged from a certified day industrial school, whether committed by a detention order or an attendance order.

(2.) The Secretary of State may order a child to be transferred from one day industrial school to another within two and a half miles of the residence of the child, or where there are different sections of the same school for different religious denominations, from one section to another.

(3.) Where a child is so transferred the undertaking, if any, given by the parent shall continue in force as if the school or section of the school named in the order of transfer had been specified in the undertaking.

Refusal to conform to Rules.

VIII. Section 71 of the Children Act (p. 295) shall, in its application to day industrial schools, take effect with modifications as follows :—

If a child of the age of twelve years or upwards sent to a certified day industrial school under a detention order is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable to be brought before a petty sessional court, and the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school, and to be there detained, subject and according to the provisions of Part IV. of the Children Act.

Wilfully neglecting to attend School.

IX. Section 72 of the Children Act (p. 296) shall, in its application to day industrial schools, take effect with modifications as follows :—

(1.) If a child, of the age of twelve years or upwards, sent to a certified day industrial school under a detention order wilfully neglects to attend thereat, he may at any time before

the expiration of his period of detention be brought before a petty sessional court, and the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school to be there detained subject and according to the provisions of Part IV. of the Children Act.

(2.) If any person—

(*a*) knowingly assists or induces directly or indirectly a child sent to a certified day industrial school not to attend thereat ;

(*b*) knowingly harbours, conceals, or prevents from returning to school, a child who has neglected to attend the school, or knowingly assists in so doing ;

he shall, on summary conviction, be liable to be imprisoned for any term not exceeding fourteen days, with or without hard labour, or to a fine not exceeding five pounds.

Reception of Child under Attendance Order or without Order.

X. Whereas it is enacted by Section 79 of the Children Act as follows :—

"The managers of a certified day industrial school may, upon the request of a Local Education Authority and of the parent or guardian of, or other person legally liable to maintain, a child, and upon the undertaking of the parent, guardian, or other person, to pay towards the industrial training and meals of the child such sum as a Secretary of State may authorise, receive the child into the school under an attendance order or without an order of a court."

And whereas by the 11th section of the Elementary Education Act, 1876, it is enacted in effect that any child under an attendance order requiring him to attend a certified day school shall attend that school every time that the school is open, or in any other regular manner as is specified in the order ;

It is hereby ordered, with respect to an attendance order requiring attendance in a certified day industrial school, that the following provisions shall apply ;

(*a*) The school shall be some certified day industrial school, the managers of which are willing to receive the child, which is within two and a half miles of the residence of the child ;

(*b*) The attendance order shall specify the period for which the child is to attend the school, being such period as to the court seems proper, but not in any case extending beyond the time when the child will attain the age of fourteen years :

(c) The undertaking of the parent may be made in the form set forth in Schedule A hereto (*see p.* 332) : and

It is further ordered with respect to a child received without an order of the court that the undertaking of the parent shall specify the religious persuasion to which the child belongs, and may be made in the form set forth in Schedule B thereto.

Contribution by Parents.

XI. Whereas by Section 82 of the Children Act, 1908 (p. 311), it is enacted as follows :—

"(1.) Where a court orders a child to be sent to a certified day industrial school, the court shall also order the parent of the child, or other person liable to maintain him, to contribute to his industrial training and meals in the school such sum as is named in the order, not exceeding such sum as may be declared by Order in Council to represent approximately the average cost of industrial training and meals in day industrial schools in the locality in which the school to which the child is sent is situate.

"(2.) It shall be the duty of the Local Education Authority to obtain and enforce the order, and every sum paid under the order shall be paid over to the Local Education Authority in aid of their expenses for elementary education under the Education Acts, 1870 to 1907."

It is hereby declared that the following sums represent approximately the average cost of industrial training and meals in day industrial schools in the localities specified :—

	s.	d.	
Schools in London, Leeds, and Bristol ..	2	0	a week.
Schools in other towns in England ..	1	9	„

XII. Section 75 of the Children Act (p. 305) shall, in its application to day industrial schools, take effect with modifications as follows :—

(1.) Every order requiring a parent or other person to contribute to the industrial training and meals of a child ordered to be sent to a day industrial school may specify the time during which the payment is to be made, or may direct the payment to be made until further order, and shall be enforceable as an order of affiliation.

(2.) Any such order may, on application being made either by the person on whom the order is made or at the instance of the Local Education Authority, and on fourteen days' notice of such application being given to such authority or person on whom the order was made, be varied by any court which would have had power to make the order.

(3.) Any such order shall be binding on the person on whom it is made:

Provided that if that person was not summoned to attend the sitting of the court at which the order was made, the order shall be served on him in manner pescribed by rules of court, and shall be binding on him unless he makes an application against it within the time prescribed by rules of court to the court by which the order was made, on the ground that he is not liable to maintain the child, and on any such application being made the court may confirm the order with or without modifications or may rescind it.

(4.) Where a parent or other person has been so ordered to contribute to the industrial training and meals of a child, he shall give notice of any change of address to the Local Education Authority, and if he fails to do so, without reasonable excuse, he shall be liable on summary conviction to a fine not exceeding two pounds.

(5.) The Local Education Authority may in their discretion remit wholly or partially any payment ordered to be made under this section.

(6.) Where there is some person, other than the parent, for the time being liable to maintain a child, such an order as aforesaid may be made on that person notwithstanding that there may be also a parent.

(7.) Any court making an order for contribution by a parent or other such person may, in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-named person.

XIII. Section 88 (6) of the Children Act (p. 314) shall, in its application to day industrial schools, take effect with modifications as follows:—

A certificate purporting to be under the hand of the superintendent of the day industrial school or an officer of the managers, stating that any sum due from a parent or other person for the maintenance of a child is overdue and unpaid shall be evidence of the facts stated therein.

Miscellaneous.

XIV. All expressions used in this Order shall have the same meaning as in the Children Act, 1908.

XV. This Order shall not extend to Scotland or Ireland.

XVI. The Orders in Council of the 20th March, 1877, 25th October, 1881, 12th March, 1903, and 20th November, 1905, are hereby revoked as regards England and Wales.

A. W. Fitzroy.

SCHEDULE A. (*See Art. X., p.* 330).

Undertaking of Parent in the case of an Attendance Order.

Whereas a complaint has been made under the 11th section of the Elementary Education Act, 1876, against *A.B.* of , a child under the age of 14 years, with a view to an order being made requiring him to attend a certified efficient school, and whereas I, *C.D.* , am the parent of the said *A.B.* , I hereby undertake that if an attendance order be made requiring him to attend the certified day industrial school at , I will pay to the managers of the said school, toward the industrial training and meals of the said *A.B.* in the said school the sum of per week so long as such attendance order is in force Dated day of 19 .

(Signed)

SCHEDULE B. (*See Art. X., p.* 330).

Undertaking of Parent in the case of a Child about to attend a School without any Order of Court.

I, *C.D.* of , being the parent of *A.B.* , a child under 14 years of age, and of the religious persuasion of , hereby undertake to pay to the managers of the certified day industrial school at towards the industrial training and meals of the said *A.B.* in the said school the sum of per week for the term of , and for such further terms as may be agreed upon between myself and the said managers and the Local Education Authority.

Dated day of , 19 .

(Signed)

LOCAL EDUCATION AUTHORITIES (MEDICAL TREATMENT) ACT, 1909.

(9 Edw. VII., c. 13.)

An Act to provide for the recovery by Local Education Authorities of Costs for Medical Treatment of Children attending Public Elementary Schools in England and Wales.

[*20th October*, 1909.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Recovery by Local Education Authority of cost of Medical Treatment.

1. Where any Local Education Authority provides for the medical treatment of children attending any public elementary school under section thirteen of the Education (Administrative Provisions) Act, 1907, there shall be charged to the parent of every child in respect of any treatment provided for that child such an amount not exceeding the cost of treatment as may be determined by the Local Education Authority, and in the event of payment not being made by the parent it shall be the duty of the authority, unless they are satisfied that the parent is unable by reason of circumstances other than his own default to pay the amount, to require the payment of that amount from that parent, and any such amount may be recovered summarily as a civil debt.

Note 1.—By sec. 13 (1) (*b*) of the Education (Administrative Provisions) Act, 1907, see p. 271, it is the duty of the Local Education Authority to provide for the medical inspection of the school children at various times ; they had also the power to make such arrangements as might be sanctioned by the Board of Education for attending to the health and physical condition of the children educated in the public elementary schools. The above section made it the duty of the Local Education Authority to recover from the parent the cost of such treatment, unless they were satisfied that the parent was unable by reason of circumstances other than his own default, to pay the amount. The authority must be able to show reasonable grounds for being thus satisfied. It is the duty of the district auditor to see that there are such grounds. The mode of recovering amounts summarily as civil debts is laid down in sec. 35 of the Summary Jurisdiction Act, 1879. The duty of determining what arrangements should be

made has now passed to the Minister of Health, but subject to his ultimate control it is to be exercised by the Board of Education (see p. 656).

By sec. 2 (1) (*b*) of the Education Act, 1918, it is now the duty of the Local Education Authority to arrange for attending to the health of the children educated in public elementary schools. See pp. 347 and 349, *post*.

See Art. 57 of the Elementary Education Code, 1919, and *Roberts* v. *Falmouth Urban Sanitary Authority*, L.G. Chronicle (1888), p. 173; 52 J.P. 741, noted on p. 607.

Franchise, &c., to be unaffected by Failure of Parents to Pay.

2. The failure on the part of any parent to pay any amount demanded under this Act in respect of any medical treatment shall not deprive the parent of any franchise, right, or privilege, or subject him to any disability.

Note 2.—By sec. 9 of the Representation of the People Act, 1918, it is enacted that a person shall not be disqualified from being registered or from voting as a parliamentary or local government elector by reason that he or some person for whose maintenance he is responsible has received poor relief or other alms.

No Obligation on Parent to submit Child to Treatment.

3. Nothing in this Act shall be construed as imposing any obligation on a parent to submit his child to medical inspection or treatment under section thirteen of the Education (Administrative Provisions) Act, 1907.

Note 3.—Sec. 13 of the Act of 1907, will be found on p. 271. By sec. 2 of the Education Act, 1918, it is now the duty of the Local Education Authority, subject to the sanction of the Board of Education, to arrange for the treatment, but it is optional with the parent to refuse the treatment when it is provided, subject, however, to the possibility of proceedings being taken against him under sec. 12 of the Children Act, 1908: see the note on p. 409.

Definition.

4. In this Act the word "parent" shall have the same meaning as in the Elementary Education Act, 1870.

Note 4.—See sec. 3 of the Act of 1870 and the note thereon, pp. 2 and 3.

Short Title.

5. This Act may be cited as the Local Education Authorities (Medical Treatment) Act, 1909.

EDUCATION (ADMINISTRATIVE PROVISIONS) ACT, 1909.

(9 Edw. VII., c. 29.)

An Act to make Provision for the better Administration by Central and Local Authorities in England and Wales of the Enactments relating to Education.

[*25th November*, 1909.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Application of 2 Edw. 7, c. 42, s. 17, to Powers under other Acts.

1. The provisions of section seventeen of the Education Act, 1902, requiring that all matters relating to the exercise by a Local Education Authority or council having powers under that Act of their powers under that Act shall stand referred to the education committee constituted under that section, and enabling the Local Education Authority or council to delegate to the education committee so constituted any of their powers under that Act, shall apply not only with respect to the powers conferred on the Local Education Authority or council under that Act, but also to any powers connected with education conferred by or under any other Act, scheme, or order, on the authority or council, expressly as a Local Education Authority or as a council having powers under the Education Act, 1902, except the power of raising a rate or borrowing money.

Note 1.—See sec. 17 (2) of the Education Act, 1902, and the note thereon (pp. 168, and 171). The effect of the above section is to require all the education business devolving on the Local Education Authority, whether under the Act of 1902, or under any other Act, or under any scheme or order, to be referred to the education committee constituted under sec. 17, except the power of raising a rate or borrowing money. That section, however, admits of Education business being dealt with by the Local Education Authority without reference to the education committee, in any case in which the authority consider the matter to be so urgent that it ought to be so dealt with. In this event, the Local Education Authority should pass a resolution declaring that the matter is urgent and the resolution should duly appear in their minutes.

As to the exercise of delegated powers and the resumption of the powers delegated, see the note to sec. 6 of the Education Act, 1918, p. 357.

The council referred to as "a council having powers under the Education Act, 1902," is the council of a non-county borough with a population of 10,000 or under; and the council of an urban district, with a population of 20,000 or under: see sec. 3 of the Education Act, 1902, p. 130, and sec. 1 on p. 123.

Accounts of Managers of a School provided under Part II. of 2 Edw. 7, c. 42.

2. Where any receipts or payments of money are entrusted by a council having powers under Part II. of the Education Act, 1902, to the managers of any school provided by them for the purpose of supplying education other than elementary, the accounts of those receipts and payments shall be accounts of the council under the Education Act, 1902, but the auditor of those accounts shall have the same power with respect to the managers as he would have if the managers were officers of the council.

Note 2.—Many managers of secondary schools receive grants of money from Local Education Authorities and other councils having powers under sec. 3 of the Education Act, 1902. Questions arose as to the power of district auditors to audit the accounts of such grants and particularly as to the power to disallow and surcharge payments which an auditor might deem to be made without lawful authority. The provisions of sec. 2 settled these questions and gave the auditor the same powers with respect to the managers of a school receiving such grants as they would have had if those managers had been officers of the Local Education Authority.

The district auditor already had power to audit the school accounts (apart from those receipts and payments), the school being provided by the council.

This section applies only to the accounts of schools provided by the education authority for the supply of education other than elementary, *i.e.* continuation schools and secondary schools. It does not apply to the accounts of endowed schools under the management of municipal corporations as trustees and governors, or otherwise than as the Local Education Authority.

See also sec. 17, Education Act, 1902, and sec. 6, Education (Administrative Provisions), Act, 1907.

Joint Action under Part II. of the Education Act, 1902.

3. *For the purpose of establishing or maintaining any school or college which any council have power to establish or maintain under Part II. of the Education Act,* 1902, *the council shall have power and shall be deemed always to have had power to unite with any other council having powers under that Part of that Act, on such terms as to payment, the appointment of a joint body of managers, and otherwise, as may be or may have been agreed between them.*

Note 3.—This section was repealed by the Education Act, 1918, but "without prejudice to the legality of anything retrospectively legalised

thereby." For additional powers as to co-operation and combination among councils having powers under the Education Acts, see sec. 6 of the Education Act, 1918.

Validity of undertakings by Students on entering Training Colleges.

4. Where with a view to following the profession of teacher a person has, in pursuance of regulations made by the Board of Education, entered into an undertaking that he will, in consideration of any grant made by the Board in respect of his maintenance, education, and training, complete the course of education or training specified in the undertaking, and will subsequently follow the profession of teacher in the manner and for the period specified in the undertaking, and in the event of failure to do so will repay to the Board such proportion of the grants made by the Board as is specified in the undertaking, the undertaking shall be binding on him notwithstanding that he was an infant at the time when the undertaking was given, and any sums repayable in accordance with the undertaking shall be recoverable as debts to the Crown.

Note 4.—By the Regulations for the Training of Teachers (Cd. 9176 of 1918, price 4d.), it is provided that before candidates are admitted as recognised students, they must give an undertaking to the Board for the purpose of securing that in return for the grant payable under the regulations, they will complete their training at the college, and thereafter actually follow the profession of teacher in an approved school for such period or periods (usually seven years for a man and five for a woman), or repay to the Board such proportion of the grant, as may respectively be specified in the undertaking. The Regulations can be obtained from H.M.'s Stationary Office, Imperial House, Kingsway, London, W. 2.

These undertakings are usually given by young persons under the age of twenty-one, and as questions arose as to the validity of undertakings given by such persons the doubt was settled by the above enactment.

As to recovery of Crown debts, see the note to sec. 1 of the Education (Local Authority Default) Act, 1904, p. 256.

Appropriation to other purposes of Land acquired for Educational Purposes.

5. The council of any county, borough, or urban district may, with the consent of the Board of Education, appropriate any land held by them in their capacity as Local Education Authority for any of the purposes of the council, otherwise than in their capacity as Local Education Authority, approved by the Local Government Board:

Provided that the council shall not on any lands so appropriated—

(*a*) create or permit any nuisance; or

(*b*) sink any well for the public supply of water or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless, after local inquiry and consideration of any objections made by persons affected, the Local Government Board, subject to such conditions as they think fit, authorise the work or construction.

Note 5.—When a statutory council acquires land under a statute it can only use the land in the manner authorised by the statute (A.-G. v. *Pontypridd Urban Council* (1906), 2 Ch. 257; 4 L. G. R. 791), and, in the absence of statutory authority, such a council cannot appropriate the land to any other purpose for which it may desire to use the land.

Sec. 5 supplies the necessary statutory authority to enable a Council that is a Local Education Authority to appropriate, for any purpose of the council that is not educational, land that was acquired by the council for educational purposes, but which is no longer wanted for such purposes.

The section is, in fact, the correlative of sec. 1 (2) (iii.), of the Education (Administrative Provisions) Act, 1907, which enables a Local Education Authority to appropriate, with the consent of the Local Government Board, for any of the purposes of the Education Acts, any land acquired by them otherwise than in their capacity of Local Education Authority. As to this, see p. 262.

With regard to the proviso to sec. 5 it must be observed that the council cannot use the land in any way that may create a nuisance; nor can they permit it to be used in any way that may create a nuisance.

The methods of user specified in para. (*b*) are all of them open to objection by adjoining owners of land and houses; but it is possible to employ all of them without creating a nuisance. The paragraph is intended to safeguard adjoining house and landowners by requiring the consent of a Government Authority to any such appropriation, after local inquiry at which the objectors can be heard, and subject to such conditions as that Authority may think fit to impose.

The powers of the Local Government Board have been transferred to the Minister of Health by the Ministry of Health Act, 1919, and the consent of that Minister must be obtained where under the above section, the consent of the Local Government Board is required.

Proof of Certificate under 62 & 63 Vict., c. 32, s. 1, Legal Proceedings.

6. In any legal proceedings by a Local Education Authority, the production of a certificate, purporting to be signed by a duly qualified practitioner approved by the Board of Education for the purposes of sub-section three of section one of the Elementary Education (Defective and Epileptic Children) Act, 1899, to the effect that a child is defective or epileptic within the meaning of that section, shall be sufficient evidence of the facts therein stated, unless the parent or guardian of the child referred to in the certificate requires the medical practitioner to be called as a witness; but it shall be lawful for the parent or guardian to give evidence in proof that the certificate is incorrect.

Note 6.—A magistrate is not entitled to form his own opinion as to whether a boy is mentally defective, by questioning the boy, in a case where the medical certificate is not disputed. He is bound to act on that certificate.

A parent was summoned for neglecting to cause a defective or epileptic child to attend school. A medical certificate was put in evidence, signed by a medical practitioner approved by the Board of Education, that the boy, not being imbecile and not being merely dull or backward, was, by reason of mental defect, incapable of receiving proper benefit from the instruction in an ordinary public elementary school, but was not incapable by reason of such defect of receiving benefit from instruction in a certified special class or school.

No evidence was given by the parent and he did not require the medical practitioner to be called as a witness, but the magistrate asked the boy some simple questions, and his answers showed that he could understand them, and that he was able to read and spell monosyllables. The magistrate then dismissed the summons on the ground that the boy was not mentally deficient but was merely dull or backward. The Divisional Court held that the magistrate was wrong (*R.* v. *de Grey, Exparte Fitzgerald* (1913), 77 J.P. 463).

Short Title and Construction.

7. This Act may be cited as the Education (Administrative Provisions) Act, 1909, and shall be construed as one with the Education Acts, 1870 to 1907, and those Acts and this Act may be cited together as the Education Acts, 1870 to 1909.

Note 7.—As to the effect of directing that one Act shall be construed as one with another or other Acts, see the note to sec. 52 of the Education Act, 1918, p. 437.

EDUCATION (CHOICE OF EMPLOYMENT) ACT, 1910.

(10 EDW. VII. & 1 GEO. V., c. 37.)

An Act to enable certain Local Education Authorities to give Boys and Girls Information, Advice, and Assistance with respect to the Choice of Employment. [28*th November*, 1910.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power of certain Local Education Authorities to give Assistance with respect to Choice of Employment.

1.—(1.) The powers conferred upon the councils of counties and county boroughs as Local Education Authorities under section two of the Education Act, 1902 (in this Act called the principal Act), shall include a power to make arrangements, subject to the approval of the Board of Education, for giving to boys and girls under eighteen* years of age assistance with respect to the choice of suitable employment, by means of the collection and the communication of information and the furnishing of advice. (*See p.* 651.)

(2.) The council of a county, and the council of a non-county borough or urban district within the county who are a Local Education Authority under Part III. of the principal Act may, as part of their powers under Part II. of that Act, enter into and carry into effect arrangements or agreements for the co-operation of the council of the borough or district with the county council in respect of the exercise by the county council of their powers under this Act, either—

(*a*) by rendering to the county council such assistance as may be arranged or agreed ; or

(*b*) by exercising within the borough or district, on behalf of the county council, all or any of the powers of that council under this Act ;

and any such arrangement or agreement may, amongst other things, provide for the proportion in which the expenses incurred under it are to be borne by the councils respectively.

(3.) The expenses incurred under this Act by any council (whether the council of a county, county borough, borough, or urban district) shall be defrayed as part of the expenses of that council under section two or section three of the principal Act, as the case may be.†

Short Title.

2. This Act may be cited as the Education (Choice of Employment) Act, 1910, and this Act and the Education Acts, 1870 to 1909, may be cited together as the Education Acts, 1870 to 1910.

* "Eighteen" was substituted for "seventeen" by sec. 22 of the Education Act, 1918.
† As to expenses, see sec. 18 of the Education Act, 1902, p. 181.

EDUCATION (ADMINISTRATIVE PROVISIONS) ACT, 1911.

(1 & 2 Geo. V., c. 32.)

An Act to make provision for the better Administration by the Central and Local Authorities in England and Wales of the Enactments relating to Education.

[16*th December*, 1911.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power of Board of Education to make Contribution Orders in respect of Border Children.

1.—(1.) Where any children resident in the area of any Local Education Authority for the purpose of Part III. of the Education Act, 1902, are receiving education in any public elementary school within the area of some other Local Education Authority, the Board of Education may, if they think fit, on the application of that other Local Education Authority (in this section referred to as the applicant authority), and after giving the first named Local Education Authority (in this section referred to as the respondent authority) an opportunity of being heard, make a contribution order under this section.

(2.) For the purpose of this section, a contribution order means an order directing the respondent authority to pay to the applicant authority annually such sum as the Board think proper in respect of children resident in the area of the respondent authority who, in the opinion of the Board, are properly receiving education in a public elementary school within the area of the applicant authority.

(3.) In considering whether children are properly receiving education in a school outside the area in which they reside, the Board of Education shall have regard to the interests of secular instruction, to the wishes of parents as to the education of their children, and to economy of rates.

(4.) Any sum due to an applicant authority under a contribution order shall be recoverable as a debt due to that authority from the respondent authority, and the Board of Education may, if they think fit, without prejudice to any other remedy on the part of the applicant authority, pay any such sum to

the applicant authority, and deduct any sum so paid from any sums payable to the respondent authority on account of Parliamentary grants.

(5.) If any question arises between the applicant and respondent authorities as to the amount due in any year under a contribution order, that question shall be referred to the Board of Education, and the decision of the Board shall be final.

(6.) The Board of Education may revoke or vary a contribution order on the application either of the applicant authority or of the respondent authority after giving the other authority an opportunity of being heard. A contribution order shall not be made under this section so as to alter, without the consent of the parties, the effect of any subsisting agreement made between two or more Local Education Authorities before the passing of this Act with respect to contributions in connexion with the education, within the area of one education authority, of children resident within the area of another such authority.

Amendment of sec. 22 (2) of Education Act, 1902, as to date at which the limit of Age under that Sub-section is to be reckoned.

2. For the purposes of sub-section (2) of section twenty-two of the Education Act, 1902, the Board of Education may, on the application of the Local Education Authority, by order, substitute, as respects any public elementary school within the area of the authority, the close of the educational year as fixed by the Board for that school for the close of the school year, and, as respects any such school, that sub-section shall have effect as if the close of the educational year fixed by the order were substituted for the close of the school year.

Note 2.—See also sec. 8 (5) of the Education Act, 1918, page 359.

Exemption of School Buildings from Building Bye-laws where plans approved by Board of Education.

3. The provisions of any bye-laws made by any local authority under section one hundred and fifty-seven of the Public Health Act, 1875, as amended by any other Act, with respect to new buildings (including provisions as to the giving of notices and deposit of plans and sections), and any provisions in any Local Act dealing with the construction of new buildings, and any bye-laws made with respect to new buildings under any Local Act, shall not apply in the case of any new buildings being school premises to be erected, or erected, according to plans which are under any regulations relating to the payment of grants required to be, and have been, approved by the Board of Education.

Note 3.—Sec. 157 of the Public Health Act, 1875, has been considerably extended and amended by sec. 23 of the Public Health Act, 1890, as regards districts in which Part III. of the latter Act has been put in force. It has been further amended by the Public Health Act, 1907, as regards the districts in which the Act of 1907 has been put in force.

A Departmental Committee was appointed to consider and report how Local Education Authorities could cheapen buildings for schools, and it was found from evidence given before the committee that in certain districts local authorities were working under antiquated bye-laws, which resulted in plans having to be made for buildings which were very much more expensive than the education authority or the Board of Education considered necessary. For instance, bye-laws sometimes required much thicker walls than were necessary in schools. As a result the above section was enacted.

The effect of the section is to remove from the operation of local building bye-laws new school buildings which are to be erected according to plans approved by the Board of Education.

The Building Regulations of the Board of Education were prepared in 1914 and took effect as from the 1st September, 1914. (Cd. 7516, 2½d.)

In *Higgs and Hill* v. *Stepney Borough Council* (1914), 1 K.B. 505, a question arose as to the meaning of the words "construction of new buildings," as used in the above section. The licence of the borough council, under the Metropolis Management Act, 1855, is required in the case of hoardings erected under sec. 121 of the Act. The appellants were contractors for the erection of new school buildings which were required to be and had been approved by the Board of Education. It was necessary to erect a hoarding on the public footway and the appellants claimed that by sec. 3 of the Education (Administrative Provisions) Act, 1911, the contract buildings, including the hoarding, were exempted from the provisions of the secs. 121-123 of the Metropolis Management Act, 1855. The court held that they were not exempted. Mr. Justice Channell said that the words "Construction of new buildings," refer to the mode of construction of the buildings, and that the intention was to preclude the application, to the buildings therein dealt with, of the enactments in the London Building Act and similar Local Acts which go to the mode of construction of new buildings, and not to preclude the application of enactments dealing with interference with the highway, which is all that the sections in question are directed to.

In *Holliday and Greenwood* v. *District Surveyors Association* (1914), 2 K.B. 803, the question arose whether, in view of the above sec. 3, it was necessary to issue the building notice required under sec. 145 of the London Building Act, 1894, before beginning to erect a new public elementary school building that was to be erected according to plans approved by the Board of Education. The court held that sec. 145 was a provision in a Local Act, "dealing with the construction of new buildings," within the meaning of sec. 3 of the Education (Administrative Provisions) Act, 1911, and that it did not apply to the buildings in question.

On the other hand, the exemption of education authorities in the above sec. 3, as regards the giving of notice to the district surveyor in respect of the construction of new school buildings, does not extend to alterations or additions to old buildings, such as the remodelling of the infants' department of a public elementary school; and a district surveyor, having received a building notice under sec. 145 of the London Building Act, 1894, which imposes duties upon him in respect of such an alteration, is entitled to the fees provided for him under sec. 154 of that Act (*Akers* v. *Daubney* (1914), 13 L. G. R. 1201).

Audit of Accounts of Governing bodies under 52 & 53 *Vict., c.* 40.

4. The accounts of the receipts and expenditure of any governing body to whom in pursuance of a scheme made under the Welsh Intermediate Education Act, 1889, any payments are made out of any general fund administered by a Local Education Authority as a governing body under that Act, as well as the accounts of the receipts and expenditure of any Local Education Authority in its capacity as such a governing body, shall be audited in like manner and subject to the same provisions as the accounts of a county council, and the enactments relating to the audit of those accounts and to all matters incidental thereto or consequential thereon (including the penal provisions of those enactments) shall apply accordingly, and any provisions in any scheme which relate to the audit of the accounts of any such governing body shall cease to have effect.

Note 4.—As to the audit of accounts of a county council, see the note to sec. 18 (3) of the Education Act, 1902, p. 185.

Short Title.

5. This Act may be cited as the Education (Administrative Provisions) Act, 1911, and shall be construed as one with the Education Acts, 1870 to 1909, and those Acts and this Act may be cited together as the Education Acts, 1870 to 1911.

Note 5.—See the note to sec. 52 of the Education Act, 1918, as to the construction of one Act with another (p. 437).

EDUCATION (PROVISION OF MEALS) ACT, 1914.

(4 & 5 Geo. 5, c. 20.)

An Act to amend the Education (Provision of Meals) Act, 1906.

[*7th August*, 1914.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Extension of Powers as to Feeding of School Children.

1. A Local Education Authority may, without any application to the Board of Education, spend out of the rates such sums as may be necessary to meet the cost of the provision of food under section three of the Education (Provision of Meals) Act, 1906, and accordingly in that section the words "apply to the Board of Education, and that Board may authorise them to," and from "provided that" to the end of the section, shall be repealed.

Note.—The Act of 1906 is set out at p. 257. See the notes on the several sections of that Act.

Act to apply both on days when the School meets and on other days.

2. The powers of a Local Education Authority under the Education (Provision of Meals) Act, 1906, as amended by this Act, shall be exerciseable in respect of children attending a public elementary school within their area, both on days when the school meets and on other days.

Short Title.

3. This Act may be cited as the Education (Provision of Meals) Act, 1914, and the Education (Provision of Meals) Act, 1906, and this Act may be cited together as the Education (Provision of Meals) Acts, 1906 to 1914.

EDUCATION ACT, 1918.

(8 & 9. GEO. V., c. 39.)

An Act to make further provision with respect to Education in England and Wales and for purposes connected therewith.

[*8th August*, 1918.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

NATIONAL SYSTEM OF PUBLIC EDUCATION.

Progressive and Comprehensive Organisation of Education.

1. With a view to the establishment of a national system of public education available for all persons capable of profiting thereby, it shall be the duty of the council of every county and county borough, so far as their powers extend, to contribute thereto by providing for the progressive development and comprehensive organisation of education in respect of their area, and with that object any such council from time to time may, and shall when required by the Board of Education, submit to the Board schemes showing the mode in which their duties and powers under the Education Acts are to be performed and exercised, whether separately or in co-operation with other authorities.

Note 1.—This Section came into operation on the 1st August, 1919.

The President of the Board of Education explained in the House of Commons that the opening words of sec. 1, down to "profiting thereby," were intended to give an administrative direction of the policy intended to be carried out by the public bodies administering the education laws in the country. It is desired that, in framing schemes for education in the respective areas, Local Education Authorities should have regard to the desirability of providing different types of education suitable to the needs of children who are capable of profiting by those classes of education (Parl. Debates, vol. 105, col. 1990).

Schemes.

The procedure to be adopted by Local Education Authorities in the preparation and submission of schemes to the Board of Education is set out in sec. 4 of this Act. The powers of that Board in regard

to the schemes submitted to them are set out in sec. 5. When a scheme is approved by the Board it becomes the duty of the Local Education Authority to give effect to the scheme. If a Local Education Authority fail or refuse to submit a scheme under the Act, they can be compelled to fulfil their duty in the matter by order of the Board of Education enforceable by *mandamus*: see sec. 16 of the Education Act, 1902, p. 166, and the note thereon. See also sec. 5 (3), p. 354.

A scheme may be amended, see sec. 3 (2), which enables a Local Education Authority to submit schemes from time to time to the Board of Education. See also sec. 32 of the Interpretation Act, 1889, which provides that where an Act passed after the 1st January, 1890, confers a power or imposes a duty, then unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires, and where an Act passed after that date confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bye-laws.

The power to amend by a fresh scheme is subject to the power given by sec. 5 of this Act to the Board of Education to disapprove of the scheme.

The Board of Education have issued a memorandum as to the Schemes to be made and submitted under this Act (Circular 1119. See Appendix, p. 634).

Development of Education in Public Elementary Schools.

2.—(1.) It shall be the duty of a Local Education Authority so to exercise their powers under Part III. of the Education Act, 1902, as—

(*a*) to make, or otherwise to secure, adequate and suitable provision by means of central schools, central or special classes, or otherwise—

(i.) for including in the curriculum of public elementary schools, at appropriate stages, practical instruction suitable to the ages, abilities, and requirements of the children; and

(ii.) for organising in public elementary schools courses of advanced instruction for the older or more intelligent children in attendance at such schools, including children who stay at such schools beyond the age of fourteen;

(*b*) to make, or otherwise to secure, adequate and suitable arrangements under the provisions of paragraph (*b*) of sub-section (1) of section thirteen of the Education (Administrative Provisions) Act, 1907, for attending to the health and physical condition of children educated in public elementary schools; and

(*c*) to make, or otherwise to secure, adequate and suitable arrangements for co-operating with Local Education Authorities for the purposes of Part II. of the

Education Act, 1902, in matters of common interest, and particularly in respect of—

(i.) the preparation of children for further education in schools other than elementary, and their transference at suitable ages to such schools; and

(ii.) the supply and training of teachers;

and any such authority from time to time may, and shall when required by the Board of Education, submit to the Board schemes for the exercise of their powers as an authority for the purposes of Part III. of the Education Act, 1902.

(2.) So much of the definition of the term "elementary school" in section three of the Elementary Education Act, 1870, as requires that elementary education shall be the principal part of the education there given, shall not apply to such courses of advanced instruction as aforesaid.

Note 2.—This section came into operation on the 1st August, 1919. Part III. of the Education Act, 1902, will be found on p. 132.

Practical Instruction.

Prior to the passing of this Act, every Local Education Authority had power to provide forms of practical instruction in handicraft in elementary schools. A large number of Local Education Authorities have not taken action in that direction. They have not exercised those powers, and consequently there has been a great divergence of practice between one part of the country and another. In some parts of the country gardens have been provided for teaching children horticulture, and in other parts of the country practically nothing of the sort has been done. The object of this section is to enable the Board of Education to require "practical" as well as advanced instruction to be provided in elementary schools (105 Parl. Debates, 2048).

"Practical instruction" is defined in sec. 48. It means instruction in cookery, laundrywork, housewifery, dairywork, handicrafts, and gardening, and such other subjects as the Board of Education declare to be subjects of practical instruction. The practical instruction which it is the duty of Local Education Authorities to give is to be suitable to the ages, abilities and requirements of the children. Within these limits a considerable variety is open. It is not intended to set up what is known as "vocational" education, nor to train children according to their social status. That is not the object of the word "requirements." But town children may require different training to country children: the elements of agriculture, gardening and forestry may be made available more generally for the former whilst handicrafts can be more suitably utilised in training the latter. Each child can under the section be developed as his own interests require.

Regulations for practical instruction in Domestic Subjects, Dairy Work, Handicraft and Gardening are contained in Schedule III. of the Elementary Education Provisional Code, 1919 (Grant Regulations No. 8, p. 35).

Advanced Instruction.

The advanced instruction referred to is not intended to be technical or vocational instruction, but practical general instruction. It may be associated with the instruction authorised by sec. 22 (2), of

the Education Act, 1902. It is to be suitable not only to the older children who stay at school longer than the law requires, but also to the clever children who attain the highest standard, perhaps a year or more before they can lawfully leave school, and who are apt to drift into desultory reading if no advanced instruction suitable to their requirements is available (105 Parl. Debates, 2056).

Sec. 2 is limited to the authority under Part III. of the Act of 1902, *i.e.* the authority responsible for elementary education. It does not give to that authority higher education powers. It merely enables them to co-operate with the higher education authority by enabling teachers to prepare the children in elementary schools so as to enable them at the proper time to pass on to schools which provide education other than elementary.

As to advanced courses in public elementary schools, reference may be made to para. 1 (iii.) of the Prefatory Memorandum to the Elementary Education Provisional Code, 1919, and to Articles 10, 17 to 20, and 33 (*c*) of that Code.

And so with regard to the supply and training of teachers. That is a matter for the authority that deals with higher education; but the authority for elementary education can co-operate in various ways. For instance they can direct their masters to look out for children likely to be suitable for pupil teachers and train them accordingly whilst they are still at elementary schools. It is not intended that higher education should be given in the elementary schools beyond what is expressly provided for in the section in the way of advanced instruction for the older and more intelligent children.

See the Regulations for the employment of teachers undergoing Preliminary Education, in the Code, p. 28.

Sub-Division (*a*):—As to the provision of central schools and central or special classes, see the powers conferred by secs. 31 and 32, of this Act (p. 392).

Sub-Division (*b*):—See secs. 18 and 25 of this Act and sec. 13 of the Act of 1907, on p. 271. Sec. 3 of the Local Education Authorities (Medical Treatment) Act, 1909, makes it optional with parents to refuse medical treatment for their children, although it is the duty of Local Education Authorities (within limits) to make provision for such treatment. See note (2) to sec. 13 of the Education (Administrative Provisions) Act, 1907, p. 271.

Sub-Division (*c*):—Part II. of the Education Act, 1902, will be found on p. 125. It sets out the powers of Local Education Authorities to supply or aid the supply of higher education. The object of the new provision is to enable Local Education Authorities for elementary education to co-operate with the authorities for higher education in the matters mentioned in (i.) and (ii.). Provisions relating to the training of teachers will be found in sec. 22 (3) of the Act of 1902, p. 203; and see sec. 4 of the Education (Administrative Provisions) Act, 1909, p. 337. Regulations for the training of Teachers for Elementary Schools, issued by the Board of Education, came into force on the 1st October, 1918, and were amended by a further regulation dated 11th April, 1919, for England; and dated 16th May, 1919, for Wales. The training of teachers is a matter for the authority for higher education. The power given by sec. 2 (1.) (c) (ii.) does not alter this; it merely makes it the duty of the authority for elementary education to co-operate in the matter with the authority for higher education.

As to schemes, see the note to sec. 1, above.

Sub-sec. (2):—This amendment of the definition of "elementary school," in sec. 3 of the Act of 1870, enlarges the scope of the

Education Acts in their application to elementary education. Elementary schools will in future supply advanced instruction, where necessary, as well as the education which was known as elementary prior to the passing of the Act of 1918.

Establishment of Continuation Schools.

3.—(1.) It shall be the duty of the Local Education Authority for the purposes of Part II. of the Education Act, 1902, either separately or in co-operation with other Local Education Authorities, to establish and maintain, or secure the establishment and maintenance under their control and direction, of a sufficient supply of continuation schools in which suitable courses of study, instruction, and physical training are provided without payment of fees for all young persons resident in their area who are, under this Act, under an obligation to attend such schools.

(2.) For the purposes aforesaid the Local Education Authority from time to time may, and shall when required by the Board of Education, submit to the Board schemes for the progressive organisation of a system of continuation schools, and for securing general and regular attendance thereat, and in preparing schemes under this section the Local Education Authority shall have regard to the desirability of including therein arrangements for co-operation with universities in the provision of lectures and classes for scholars for whom instruction by such means is suitable.

(3.) The council of any county shall, if practicable, provide for the inclusion of representatives of education authorities for the purposes of Part III. of the Education Act, 1902, in any body of managers of continuation schools within the area of those authorities.

Note 3.—The "appointed day" for the purposes of this section, *i.e.* the day when it came into operation was the 1st August, 1919. It should be noted, however, that no system of continuation schools can be worked on the basis of obligatory attendance until secs. 10 to 12 of this Act come into operation.

(1.) In the Education Bill as introduced, this section began with the words "With a view to continuing the education of young persons and helping them to prepare for the freedom and responsibilities of adult life." . . . The words were struck out when the Bill was in Committee in the House of Commons, but it was admitted that they shewed the scope and purpose of the proposal to require Local Education Authorities to establish continuation schools in their respective areas.

As to the Local Education Authority for Part II. of the Education Act, 1902, see sec. 1 of that Act and the note thereto (pp. 123 and 125).

For provisions enabling Local Education Authorities to co-operate for the purpose of exercising powers and performing duties under the Education Acts, see sec. 6 of this Act, below.

A continuation school is a part-time school for the provision of higher education for young persons under eighteen years of age (see sec. 48). Provision is made in sec. 10 for the compulsory attendance of all young persons except those who are specially excepted in that

section; but the compulsory powers of the Act in relation to Continuation schools have not yet come into operation.

On 4th April, 1919, the Board of Education issued a Memorandum on the Staffing of Continuation Schools (Circular 1102).

In the Appendix to that memorandum there are suggestions as to the Curriculum from 14 to 16, and from 16 to 18 years of age.

"Suitable" courses of study, instruction and training are to be provided at the continuation schools, but the Act does not specify what is meant by "suitable." Different education authorities will doubtless interpret this word in different ways according to the requirements of their respective districts. In agricultural districts instruction may be "suitable" to young persons who intend to pass their lives in agricultural pursuits. In manufacturing districts the authorities may direct attention to mechanical or commerical subjects, and in seaport towns matters connected with life on the sea may have prior attention. It will be for the Local Education Authorities to suggest in their schemes the nature of the instruction which they deem suitable and the Board of Education will determine, in the manner indicated in sec. 5, the form which the various schemes are finally to take. It was made clear in the debates in Parliament that the instruction to be given was not intended to be purely vocational or technical. The object is to educate the minds of the young persons who attend these schools and not to teach them trades. There is nothing, however, to prevent the system of education laid down in any scheme from being moulded with some regard to the probable future occupations of the persons who are likely to attend the schools, but the framers of the Act have made it clear that what they desire to have continued is the system of scientific, artistic and literary education which they regard as the essential feature of public elementary education. The science and art, however, may be such as underlie the business or vocation which it is the learner's intention to follow. [See the Memorandum on Schemes, pp. 635-639 and p. 647].

It will be observed that the Local Education Authority will be required to provide a sufficient supply of continuation schools for all young persons resident in their area who, under the Act, will be under an obligation to attend such schools (see sec. 10 (2)). They will not be required to provide for persons not resident in their area; but there is nothing to prevent them from receiving non-residents in their schools, and they can, under sec. 6, make arrangements for receiving children resident in other areas under an agreement with the Local Education Authority of those areas; and the agreement may provide for contributions from the outside authorities towards the education of the children from their districts. The limits of the obligation to attend are laid down in sec. 10 of this Act.

Physical Training: The President of the Board of Education disclaimed the intention of endeavouring to enforce military training in continuation schools. The policy of the Board of Education would be directed towards the development of physical training on the principles which have governed the action of the Board in this matter in respect of elementary education (105 Parl. Debates, 2181). There will be a certain reasonable amount of drill in connection with physical training (*ibid.*, 2213), and the opinion of the House was that this was desirable but that any reference to military training in the Bill, whether for or against, was not desirable. See sec. 17 on p. 378.

Schemes of instruction and physical training have to be made by the Local Education Authorities and submitted for approval to the Board of Education. There is scope in the Act for those who desire a rigid system of drill even accompanied by dummy rifles, but it will rest with the Board to decide whether and how far any such scheme shall be carried out. In the paragraph on Physical Training which

concludes the Appendix to the Memorandum referred to in this note above (Circular 1102), it is recommended that the training should be based on the Swedish system.

See also the Syllabus of Physical exercises issued by the Board of Education, and their Circular 976 of 10th February, 1917, as to the organisation and supervision of the Teaching of Physical Training in Public Elementary Schools.

(2.) The local authority shall have regard to, that is they must take into consideration the desirability of making arrangements for co-operating with universities in the provision of lectures and classes for the scholars. Local Education Authorities are not bound to co-operate but they must consider the question, the intention being, where possible, to facilitate subject to the control of the authority, the giving of lectures in the continuation schools by university ecturers where this kind of instruction can be made practicable and available, and where the scholars are of the sort who may usefully benefit by it.

(3.) The continuation school may have a body of managers. Possibly that school will be held in some public elementary school building belonging to the Local Education Authority for the purposes of Part III. Where that is so that authority will be responsible for the elementary education given there during the day time, but the Part II. authority will have control during the evening period, when the continuation school is being carried on. This anomalous position will to some extent be adjusted by the operation of sub-sec. (3), by which representatives of the elementary education authorities are, if practicable, to be included among the managers of the continuation schools within their area . This will be especially necessary in the large urban districts where the urban councils do a great deal for elementary education and may be expected to be equally willing to assist in promoting education in the continuation schools.

For certain administrative provisions relating to continuation schools, see sec. 12.

In a circular (No. 1137) issued on 2nd December, 1919, the Board of Education have suggested that L.E.A.s should associate the Juvenile Organisations Committees with their own work in establishing the social life of the future Continuation Schools.

Preparation and Submission of Schemes.

4.—(1.) The council of any county, before submitting a scheme under this Act, shall consult the other authorities within their county (if any) who are authorities for the purposes of Part III. of the Education Act, 1902, with reference to the mode in which and the extent to which any such authority will co-operate with the council in carrying out their scheme, and when submitting their scheme shall make a report to the Board of Education as to the co-operation which is to be anticipated from any such authority, and any such authority may, if they so desire, submit to the Board as well as to the council of the county any proposals or representations relating to the provision or organisation of education in the area of that authority for consideration in connection with the scheme of the county.

(2.) Before submitting schemes under this Act a Local Education Authority shall consider any representations made to them by parents or other persons or bodies of persons

interested, and shall adopt such measures to ascertain their views as they consider desirable, and the authority shall take such steps to give publicity to their proposals as they consider suitable, or as the Board of Education may require.

(3.) A Local Education Authority in preparing schemes under this Act shall have regard to any existing supply of efficient and suitable schools or colleges not provided by Local Education Authorities, and to any proposals to provide such schools or colleges.

(4.) In schemes under this Act adequate provision shall be made in order to secure that children and young persons shall not be debarred from receiving the benefits of any form of education by which they are capable of profiting through inability to pay fees.

Note 4.—This section came into operation on the 1st August, 1919.

(1.) Councils of Counties are Local Education Authorities for both elementary and higher education. Many counties have county boroughs within their areas, the councils for which are also Local Education Authorities for both elementary and higher education. Moreover, almost every county has within its area one or more boroughs and urban districts the councils of which are either authorities for elementary education, or have powers for aiding higher education under sec. 3 of the Education Act, 1902.

The object of sub-sec. (1) is to secure co-operation between the Local Education Authorities for both elementary and higher education in a county, and to ensure that schemes of education of both sorts will be prepared after due consultation between the various education authorities concerned. The county authority must submit to the Board of Education with every scheme it sends up, a report as to the co-operation that may be expected; and this will form a useful basis on which the Board may be able to consider, and perhaps improve the scheme. The smaller authorities are also encouraged to approach the Board on the subject. As to this see para. 13 on pp. 639-40.

(2) Under sub-sec. (2) the Board of Education will require to be satisfied that before submitting a scheme the promoters of the scheme have considered any representations made to them by parents in the district, as well as by other persons or bodies of persons interested. It is difficult to lay down any rule as to who may be "interested," apart from the parents. Employers of labour, may have the right to make representations, and so may the trustees, governors and managers of schools already in the district. Among the bodies of persons interested may be included University Authorities and the Committees responsible for schemes of University extension lectures. See the circular (1140) of the Board of Education issued on 18th December, 1919, in the Appendix, p. 658.

(3.) See sec. 2 (2) of the Act of 1902. Presumably the County Council will have or can get information as to non-provided schools and colleges in the county which can be regarded as efficient and suitable. If not, such information can be obtained by the Board of Education under sec. 28 of this Act.

(4.) Sub-section (4) is very wide. It will probably have to be interpreted with due regard to the financial circumstances of each county, for although there is no limit imposed by the Act, the powers of the sub-section might, without some limit, be interpreted so as to cause great hardship to ratepayers. Probably what is intended is

the establishment of a liberal supply of scholarships and studentships under the powers given by sec. 23 (2) of the Education Act, 1902.

See the Memorandum of the Board of Education on schemes under this Act, Appendix p. 634. And their circular 1143, dated 31st December, 1919, on p. 660, delegating powers to H.M.'s Inspectors.

Approval of Schemes by Board of Education.

5.—(1.) The Board of Education may approve any scheme (which term shall include an interim, provisional, or amending scheme) submitted to them under this Act by a Local Education Authority, and thereupon it shall be the duty of the Local Education Authority to give effect to the scheme.

(2.) If the Board of Education are of opinion that a scheme does not make adequate provision in respect of all or any of the purposes to which the scheme relates, and the Board are unable to agree with the authority as to what amendments should be made in the scheme, they shall offer to hold a conference with the representatives of the authority and, if requested by the authority, shall hold a public inquiry in the matter.

(3.) If thereafter the Board of Education disapprove a scheme, they shall notify the authority, and, if within one month after such notification an agreement is not reached, they shall lay before Parliament the report of the public inquiry (if any) together with a report stating their reasons for such disapproval and any action which they intend to take in consequence thereof by way of withholding or reducing any grants payable to the authority.

Note 5.—This section came into operation on the 1st August, 1919.

(1.) A scheme approved by the Board of Education under this section must have effect given to it as if it were included in this Act. When once the scheme has received the approval of the Board it becomes the duty of the Local Education Authority to carry it out. As to the enforcement of the duty, see sec. 16 of the Education Act, 1902; sub-sec. (3), and sec. 44 (5) of this Act (p. 414). By sec. 52 of the Education Act, 1918, this Act is to be read as one with the Education Acts, 1870 to 1916.

(2.) The procedure in sub-sec. (2) was agreed between the Board of Education and Local Education Authorities. The public inquiry referred to in this sub-section must be held by the Board, if the education authority request it; but in the absence of such request the Board are not bound to hold the inquiry. All they are required to do in the latter case is to offer to hold a conference with representatives of the local authority.

(3.) If the Board and the Local Education Authority cannot agree on the scheme and after negotiation and, if demanded, the holding of a public inquiry agreement is still outstanding, the Board are required to bring the matter before Parliament in the manner and with the information indicated in the sub-section. The object is apparently to secure publicity, to enable Parliament to know when the Board of Education reduce or disallow a grant to the Local Education Authority and to give to any member of either House an opportunity

of raising the question, if he sees fit to do so. The Board cannot use the powers of a *mandamus* to enforce their views. But they can bring pressure to bear on the Local Education Authority by withholding or reducing any grants payable to the authority; and if they decide to act in that way, they are required to set out their reasons in their report to Parliament.

Provisions as to Co-operation and Combination.

6.—(1.) For the purpose of performing any duty or exercising any power under the Education Acts, a council having powers under those Acts may enter into such arrangements as they think proper for co-operation or combination with any other council or councils having such powers, and any such arrangement may provide for the appointment of a joint committee or a joint body of managers, for the delegation to that committee or body of managers of any powers or duties of the councils (other than the power of raising a rate or borrowing money), for the proportion of contributions to be paid by each council, and for any other matters which appear neccessary for carrying out the arrangement.

(2.) The Board of Education may, on the application of two or more councils having powers under the Education Acts, by scheme provide for the establishment and (if thought fit) the incorporation of a federation for such purposes of any such arrangements as aforesaid as may be specified in the scheme as being purposes relating to matters of common interest concerning education which it is necessary or convenient to consider in relation to areas larger than those of individual education authorities, and the powers conferred on councils by this section shall include power to arrange for the performance of any educational or administrative functions by such a federation as if it were a joint committee or a joint body of managers:

Provided that no council shall without its consent be included in a scheme establishing a federation, and no council shall be obliged to continue in a federation except in accordance with the provisions of a scheme to which it has consented.

(3.) A scheme made by the Board of Education constituting a federation, and an arrangement establishing a joint committee or a joint body of managers, shall provide for the appointment of at least two-thirds of the members by councils having powers under the Education Acts, and may provide either directly or by co-optation for the inclusion of teachers or other persons of experience in education and of representatives of universities or other bodies.

(4.) A scheme constituting a federation may on the application of one or more of the councils concerned be modified or repealed by a further scheme, and, where a scheme

provides for the discontinuance of a federation, provision may be made for dealing with any property or liabilities of the federation.

(5.) Where any arrangement under this section provides for the payment of an annual contribution by one council to another, the contribution shall, for the purposes of section nineteen of the Education Act, 1902, form part of the security on which money may be borrowed under that section.

Note 6.—This section came into operation on the 1st November, 1918. It replaces sec. 52 of the Education Act, 1870, which provided for the Combination of School Boards and was repealed by sec. 51 of the present Act. The following case was decided on an agreement for combination made under sec. 52.

In the case of *The Gellygaer School Board* v. *The Llangynidr School Board*, 12 T.L.R. 407, it appeared that the two school boards entered into an agreement for combination under sec. 52 with the sanction of the Education Department. It was thereby agreed that the two boards should be combined for the purpose of providing, maintaining, and keeping efficient certain school accommodation, viz., To accommodate at the Newtown school in the Gellygaer district the infants under seven years of age from Llechrydd district in the parish of Llangynidr. The school accommodation was to be deemed to be provided by the school board of Gellygaer, but to be common to the districts of the two school boards. The expenditure in connection with the school was to be borne by the school fund of the school board of Gellygaer, and the school board of Llangynidr were to pay such a proportion of the expenditure defrayed out of rates, as the average attendance of children from Llangynidr should bear to the total average attendance of children at the Newton school for the school year. Clause 7 of the agreement was as follows:—If at any time one of the said school boards shall serve upon the other of the said school boards a notice in writing expressing a desire to dissolve this combination, then at such time not less than six months after the service of such notice as may be specified in such notice in that behalf, or if no such time is specified at such time after the service of such notice as may be determined by the Education Department, this combination shall be dissolved, subject, nevertheless, to such terms as may be approved by the Education Department, and each of the said school boards shall thereupon pay to such person and in such manner as may be appointed by the said Department so much money as the said Department may adjudge to be reasonably due on the adjustment of the accounts and property of the said school boards. In October, 1889, the defendants gave to the plaintiffs a notice in writing "that it is their intention to dissolve the existing combination agreement between the respective boards, dated August 8, 1879, at the expiration of six months from the receipt hereof." After this notice down to the commencement of the action in this case in September, 1895, both infants and elder children from the Llechrydd district continued to attend the Newtown school, but the defendants refused to make to the plaintiffs any payment for the education of these children. This action was brought to compel payment. The plaintiffs alleged that the agreement for combination was still in force, and that the notice of dissolution was invalid because the Education Department had not approved of any terms subject to which the agreement should be dissolved, and they claimed a declaration that the agreement was effective and binding, notwithstanding the notice of dissolution, and payment by the defendants of £173, the aggregate of the sums

alleged to be payable under the agreement. The defendants contended that the dissolution was valid. Mr. Justice North held that under the construction of Clause 7 of the agreement the terms which were to be approved by the Education Department did not extend to an alteration of the date of the dissolution. The dissolution therefore took effect as from April 18th, 1890.

Co-operation.

(1.) Two or more education authorities may agree either to co-operate, that is to work jointly for the same end, or to combine, that is to work as one authority for the same end. The ordinary way of working in combination would be by appointing a joint committee or a joint body of managers to carry out the object in view. For the purpose of managing a public elementary school designed to serve for parts of two or more districts, the appointment of a joint body of managers would probably be sufficient. The provision of continuation schools to serve for several districts might well be the subject of a combination of education authorities and the same may be said of schools for practical instruction, schools for the blind, for defectives mental or physical ; so also with the provision of scholarships.

Powers could be delegated to the joint committees or joint boards of managers of any such schools and where management only is concerned, nothing more need be done. The joint committees or the joint managers would have to report their transactions from time to time for approval to the authorities whom they respectively represent, and they would have to obtain from those authorities sanction to the spending of money for the schools they manage.

Combination.

(2.) Where the combination is intended to exercise a larger jurisdiction, where for instance, it is desired that they should buy land and build thereon, and carry on a school, or college, or other institution for the purposes of the authorities in the combination the incorporation of a federation by means of a scheme under sub-sec. (2) offers greater advantages. The incorporated federation would be able to hold land and carry out the duties delegated to them more easily and probably with less friction than could be done by a joint committee or board that is not incorporated. It will be observed that the consent of every council must be obtained before it can be included in a federation, and that consent should be given in each case after the council has had before it the complete scheme of federation. In the case of joint committees and boards it will be for each of the councils in the combination to pass separate resolutions delegating the powers and duties which the committee, or board, is to exercise and carry out.

Delegation of Powers.

In the absence of any provision to the contrary, delegated powers can be resumed by the delegating authorities. *Huth* v. *Clarke* (1890), L. R. 25, Q.B.D., at p. 394.

The powers conferred upon the committee or board must be exercised by the members acting in concert. The committee or board cannot apportion among themselves as individuals the duties delegated to them : *Cook* v. *Ward* 1877, L.R. 2 C.P.D. 255. But they can appoint sub-committees.

Where a corporation delegated certain matters to a committee and the committee in turn delegated them to a sub-committee, and the corporation ratified the acts of the committee that had adopted the decision of the sub-committee, it was held that the ratification

was sufficient: *Hussey* v. *Exeter Corporation* (1918), 87 L. J. Ch. 443, 118 L.T. 13. See also *R.* v. *Chapman, ex parte* Arlidge (1918), 2 K.B. 298, 16 L.G.R. 525; and *Young* v. *Cuthbert*, cited on p. 148, in a note to sec. 7 of the Education Act, 1902.

(3.) Members of the Councils of non-county boroughs and urban districts mentioned in sec. 3 of the Education Act, 1902, though those councils are not Local Education Authorities, may be included under sub-sec. (3) as members of a federation.

Property: Borrowing Money.

(4.) The power to "deal with" any property of a federation that is to be discontinued is somewhat vague. If the federation owned land and buildings, it might be necessary to vest the property in these in one or more of the constituent authorities of the federation, and if in one authority, power is wanted to enable that authority to pay a sum of money to the other authority or authorities by way of adjustment. Moreover, borrowing powers might be wanted to enable the sum of money to be raised. Full adjustment powers would in that case be necessary, and it is doubtful whether they could be evolved out of the sub-section.

(5.) Sec. 19 of the Education Act, 1902, enables a council to borrow for the purposes of the Education Acts on the security of the fund or rate out of which the expenses of the council under the Education Acts are payable: See the note to sec. 19 on pp. 194-200. The provision in sub-sec. (5) above gives the lender an additional security for his money.

Provision as to amount of Expenditure for Education.

7. The limit under section two of the Education Act, 1902, on the amount to be raised by the council of a county out of rates for the purpose of education other than elementary shall cease to have effect.

Note 7.—This section came into force on the 8th August, 1918.

It was provided by sec. 2 of the Education Act, 1902, that the amount raised by the council of a county for the purpose of education, other than elementary, in any year out of rates under that Act should not exceed the amount which would be produced by a rate of 2d. in the pound, or such higher rate as the county council, with the consent of the Local Government Board, might fix.

That limit is removed by sec. 7, and it is now open to a county council to expend out of the rates for education other than elementary, such sums as they think the circumstances of their district require.

Attendance at School and Employment of Children and Young Persons.

Provisions as to Attendance at Elementary Schools.

8.—(1.) Subject as provided in this Act, no exemption from attendance at school shall be granted to any child between the ages of five and fourteen years, and any enactment giving a power, or imposing a duty, to provide for any

such exemption, and any provision of a bye-law providing for any such exemption, shall cease to have effect, without prejudice to any exemptions already granted. Any bye-law which names a lower age than fourteen as the age up to which a parent shall cause his child to attend school shall have effect as if the age of fourteen were substituted for that lower age.

(2.) In section seventy-four of the Elementary Education Act, 1870, as amended by section six of the Elementary Education Act, 1900, fifteen years shall be substituted for fourteen years as the maximum age up to which bye-laws relating to school attendance may require parents to cause their children to attend school, and any such bye-law requiring attendance at school of children between the ages of fourteen and fifteen may apply either generally to all such children, or to children other than those employed in any specified occupations :

Provided that it shall be lawful for a Local Education Authority to grant exemption from the obligation to attend school to individual children between the ages of fourteen and fifteen for such time and upon such conditions as the authority think fit in any case where after due inquiry the circumstances seem to justify such an exemption.

(3.) It shall not be a defence to proceedings relating to school attendance under the Education Acts or any bye-laws made thereunder that a child is attending a school or institution providing efficient elementary instruction unless the school or institution is open to inspection either by the Local Education Authority or by the Board of Education, and unless satisfactory registers are kept of the attendance of the scholars thereat.

(4.) A Local Education Authority may with the approval of the Board of Education make a bye-law under section seventy-four of the Elementary Education Act, 1870, providing that parents shall not be required to cause their children to attend school or to receive efficient elementary instruction in reading, writing, and arithmetic before the age of six years :

Provided that in considering any such bye-law the Board shall have regard to the adequacy of the provision of nursery schools for the area to which the bye-law relates, and shall, if requested by any ten parents of children attending public elementary schools for that area, hold a public inquiry for the purpose of determining whether the bye-law should be approved.

(5.) Notwithstanding anything in the Education Acts the Board of Education may, on the application of the Local Education Authority, authorise the instruction of children in public elementary schools till the end of the school term

in which they reach the age of sixteen or (in special circumstances) such later age as appears to the Board desirable:

Provided that, in considering such application, the Board shall have regard to the adequacy and suitability of the arrangements made by the authority under paragraphs (*a*) and (*c*) of sub-section (1) of section two of this Act and to the effective development and organisation of all forms of education in the area, and to any representations made by the managers of schools.

(6.) The power of a Local Education Authority under section seven of the Education Act, 1902, to give directions as to secular instruction shall include the power to direct that any child in attendance at a public elementary school shall attend during such hours as may be directed by the authority at any class, whether conducted on the school premises or not, for the purpose of practical or special instruction or demonstration, and attendance at such a class shall, where the Local Education Authority so direct, be deemed for the purpose of any enactment or bye-law relating to school attendance to be attendance at a public elementary school:

Provided that, if by reason of any such direction a child is prevented on any day from receiving religious instruction in the school at the ordinary time mentioned in the time-table, reasonable facilities shall be afforded, subject to the provisions of section seven of the Elementary Education Act, 1870, for enabling such child to receive religious instruction in the school at some other time.

(7.) In section eleven of the Elementary Education Act, 1876 (which relates to school attendance) for the words "there is not within two miles" there shall be substituted the words "there is not within such distance as may be prescribed by the bye-laws."

(8.) Nothing in this section shall affect the provisions of the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914, relating to the attendance at school of the children to whom those Acts apply.

Note 8.—As to the coming into operation of sub-secs. (1) and (2) see the proviso to sec. 52 (3). Sub-sec. (1) will come into force at the beginning of the school term which follows the official termination of the war as declared by order in council (Off. Circ. 1095: 5th March, 1919); sub-sec. (3) came into force on the 2nd December, 1918; sub-secs. (4) and (5) on the 1st August, 1919; sub-secs. (6), (7) and (8) on the 8th August, 1918.

(1.) Prior to the passing of this Act there was a double obligation on a parent in respect of the elementary education of his children. (*a*) Under sec. 4 of the Elementary Education Act, 1876, it was the duty of a parent to cause his children between five and fourteen to receive efficient elementary instruction in reading, writing, and

arithmetic. (*b*) Under sec. 74 of the Elementary Education Act, 1870, local school attendance bye-laws were made requiring the parents of children to cause their children to attend school unless there was some reasonable excuse for non-attendance. Such bye-laws are universal, and except in three or four areas, they required all children to attend school up to the age of fourteen, subject to certain exemptions contained in the bye-laws. These exemptions provided (i.) that a child of eleven employed in agriculture who had passed a certain standard of proficiency need only attend school two hundred and fifty times in the year and be totally exempt from school attendance at thirteen, cf. *Strong* v. *Treise* (1909), 1 K.B. 613; 7 L.G.R. 411; (ii.) that a child of twelve or over should be entitled (on conditions relating to previous due attendance, proficiency, or beneficial employment mentioned in the bye-laws) to either partial or total exemption from school attendance. All bye-laws, however, provided for the exemption of children at twelve on reaching a standard of education specified in the bye-laws. Further, the effect of the decision in *Stevenson* v. *Craig* (1906), 2 K.B. 298, was that under the Factory and Workshop Act, 1901, a child of twelve was entitled to work half-time in a factory or workshop notwithstanding that the bye-laws made no provision for half-time attendance at school.

Sub-sec. (1) will not affect the statutory obligation to cause a child to receive elementary education contained in sec. 4 of the Elementary Education Act, 1876. Instead of this, it will operate upon the bye-laws so that all the provisions in the bye-laws which admit of exemption at a lower age than fourteen will cease to have effect, without prejudice to any exemptions already granted. It will also abolish the statutory right to work half-time which arose under the Factory and Workshop Act, 1901.

The words "Subject as provided in this Act" relate to provisions in secs. 8 (4) and 9 (2). The present law as to school attendance appears to be as follows:—

(A) All children between five and fourteen years of age must attend at school, except

(*a*) those under six years of age who are exempted under sec. 8 (4) of this Act, and deaf children under seven (p. 445), and

(*b*) those who attain the age of five (six or seven, in case of exempted children under (*a*)) after the commencement of a school term and are refused admission to a school until the commencement of the next following term under sec. 9 (2) of this Act;

(B) Where bye-laws require it, children between fourteen and fifteen years of age may be required to attend at school except such individual children between fourteen and fifteen as have been exempted under sec. 8 (4).

(C) A Local Education Authority may, with the permission of the Board of Education, authorise the instruction of children at public elementary schools till the end of the school term in which they reach the age of sixteen years; and

(D) Children over sixteen in special circumstances, until they attain the age which the Board think desirable.

(E) In the case of blind and deaf defective and epileptic children the limit of compulsory education is sixteen years.

(2.) Sec. 74 of the Act of 1870 made thirteen years the maximum age up to which parents might be required by bye-laws to send their children to school. This was raised to fourteen by the Act of 1900; and sub-sec. (2) above, raises the maximum to fifteen. Any local authority, with the approval of the Board of Education, may adopt this maximum; and they may, under the proviso, adopt it generally,

or they may exempt certain children between fourteen and fifteen on the ground of occupation and perhaps of sex in certain circumstances.

Sec. 74 of the Act of 1870 required the bye-laws to exempt from school attendance all children who passed a certain standard. That requirement will be repealed by the Act of 1918, and a Local Education Authority which adopts the new maximum age of fifteen may exempt individual children as mentioned in the last preceding paragraph.

(3.) Under sec. 74 of the Education Act, 1870, p. 47, it is a sufficient excuse from the obligation to attend school that the child is under efficient instruction in some other manner. In some cases it has been pleaded as an excuse that the child is receiving efficient instruction in his own home, *e.g.* from his father. That excuse may still avail as a defence to proceedings for non-attendance at school; but if the efficient instruction is alleged to be given at a school or institution which is not open to inspection either by the Local Education Authority or by the Board of Education (see sec. 7 (3) of the Education Act, 1870, and sec. 7 (1) (*b*) of the Education Act, 1902), that fact will no longer be a good defence against proceedings for non-attendance; and the same result follows if satisfactory registers are not kept of the attendance of the scholars at such school or institution. The object of the clause is to prevent the operations of the many inefficient private schools that exist in the country. Children attend them, and it has been difficult to satisfy magistrates that the schools are not what they pretend to be. It was proposed in the original clause in the Bill to make the Board of Education the judge of efficiency in such cases, but that proposal was not favoured in the House of Commons and accordingly the original clause was withdrawn and the present provision, with its power of inspection and its compulsory registers of attendance, was substituted.

(4.) Sub-sec. (4) is designed to carry out the recommendation of a committee appointed by the Board of Education which reported in 1908. The consultative committee of the Board rejected a proposal to make six years the minimum age of school attendance on the ground of the average shortness of the school career, but they agreed that if the general age of school attendance was raised by one year (and this has been done by sub-sec. (1) of this section), Local Education Authorities might be empowered to make bye-laws exempting children between five and six years of age from attendance at school.

In other European countries and in the United States of America school attendance begins at six years of age, and local authorities now have the option of making that age the earliest age in this country. Three points which they should remember in considering whether they should exercise the option are: (1) whether if the children are not brought to school they will for the most part be playing in the streets; (2) whether in the circumstances in which the children mostly live their health will be likely to be affected if their education commences at five instead of at six years of age; and (3) whether the education of older children is likely to be retarded by the presence of children between five and six years of age in the school.

The provisions of the Act relating to nursery schools (see sec. 19) will materially aid in the consideration of the questions that arise but there is no obligation in the Act either for the Local Education Authority to provide or for children to attend nursery schools. Provisions for regulating public inquiries by the Board of Education will be found in sec. 40, p. 409.

(5). Sub-sec. (5) is an alternative to sec. 22 of the Education Act, 1902. The Board of Education stated in their Circular 1118 (2nd July, 1919), see Appendix, p. 632, that they will treat any

application to authorise the instruction in public elementary schools of scholars who at the close of the school year will be more than sixteen years of age, as an application under sub-sec. (5) of sec. 8 of the Act of 1918.

(6). Sub-sec. (6) lays down in general terms the principle that was decided in *Bunt* v. *Kent* (1914), 1 K.B. 207; 12 L.G.R. 34. There a child who attended ordinarily at one public elementary school was required by the education authority to attend a cookery class held at another school. The father refused to send her there although it was within the distance within which a child could be required to go to school. The Court held that under the bye-laws in force the child's attendance at the cookery centre was compulsory. The proviso enacts that if the requirement in the earlier part of the sub-section prevents the child from receiving religious instruction in the school at the ordinary time mentioned in the time-table, reasonable facilities shall be given to him, subject to the provisions of sec. 7 of the Education Act, 1870, for receiving the instruction in the school at some other time. It is apparently not intended that the child shall be required to attend the practical or special instruction or demonstration "on any day exclusively set apart for religious observance by the religious body to which his parent belongs." Any such requirement seems to be specially precluded by sec. 7 (1) of the Education Act, 1870. cf. *Marshall* v. *Graham* (1907), 2 K.B. 112; 5 L.G.R. 738. It applies, however, to attendance during the hours set apart for ordinary religious instruction in the school which the child usually attends, and if those hours are interfered with, *e.g.* on Ascension Day, it is specifically laid down that the religious instruction then omitted shall be given at some other time.

The instruction that is referred to in sub-sec. (6) as "special" appears to include not only practical instruction, as defined in sec. 48 of the Act, but also all kinds of educational training and lectures, *e.g.* instruction given at a museum, or free library in connection with the specimens and books there shewn and made available; nature study out of doors; botany explained in any garden; elementary physics in connection with the practical training given in a workshop, a laboratory, etc.

It is not contemplated by the sub-section that the child will be permanently transferred from one school to another. He is required only to attend a class at such hours as may be directed.

(7.) The object of sub-sec. (7) is to remove the discrepancy which existed between the provision as to distances in sec. 74 of the Act of 1870, and that in sec. 11 of the Act, of 1876, and to give to Local Education Authorities some latitude by enabling them to fix by bye-laws the distance or distances beyond which children shall not be compelled to attend a school. In regard to the older children, a longer distance may be prescribed than would be reasonable for the younger ones. And some regard may be paid to hilly districts under the present sub-section.

Sec. 14 of the Education Act, 1907, under which Local Education Authorities can provide conveyances for the children, should be borne in mind.

(8.) The attendance of blind and deaf children at school is provided for in sec. 11 of the Act of 1893. As to the attendance of defective and epileptic children, see secs. 4 and 11 of the Act of 1899, p. 462 and 466.

Provisions for Avoidance of Broken School Terms.

9.—(1.) If a child who is attending or is about to attend a public elementary school or a school certified by the Board

of Education under the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914, attains any year of age during the school term, the child shall not, for the purpose of any enactment or bye-law, whether made before or after the passing of this Act, relating to school attendance, be deemed to have attained that year of age until the end of the term.

(2.) The Local Education Authority for the purposes of Part III. of the Education Act, 1902, may make regulations with the approval of the Board of Education providing that a child may, in such cases as are prescribed by the regulations, be refused admission to a public elementary school or such certified school as aforesaid except at the commencement of a school term.

Note 9.—Sec. 9 came into operation on the 1st February, 1919.

The object of sub-sec. (1) is to prevent a child from leaving school on his fourteenth (or fifteenth) birthday which might occur during the school term, and to require him to remain until the school term ends. Sub-sec. (2) enables the Local Education Authority to provide that a child shall not be admitted to school except at the beginning of a school term. The provision in sub-sec. (2) is subject to regulations being made and approved by the Board of Education; and in any district in which regulations under the sub-section are not in force, the sub-section will have no operation. Model regulations were issued with a circular letter by the Board of Education, on the 31st July, 1919 (No. 1123), see Appendix, p. 610.

A school term does not include a period of holiday following the term: c.f. *Hann* v. *Plymouth Corporation*, cited on p. 42.

Compulsory Attendance at Continuation Schools.

10.—(1.) Subject as hereinafter provided, all young persons shall attend such continuation schools at such times, on such days, as the Local Education Authority of the area in which they reside may require, for three hundred and twenty hours in each year, distributed as regards times and seasons as may best suit the circumstances of each locality, or, in the case of a period of less than a year, for such number of hours distributed as aforesaid as the Local Education Authority, having regard to all the circumstances, consider reasonable:

Provided that—

(*a*) the obligation to attend continuation schools shall not, within a period of seven years from the appointed day on which the provisions of this section come into force, apply to young persons between the ages of sixteen and eighteen, nor after that period to any young person who has attained the age of sixteen before the expiration of that period; and

(*b*) during the like periods if the Local Education Authority so resolve, the number of hours for which a young person may be required to attend continuation schools in any year shall be two hundred and eighty instead of three hundred and twenty.

(2.) Any young person—

(i.) who is above the age of fourteen years on the appointed day ; or

(ii.) who has satisfactorily completed a course of training for, and is engaged in, the sea service, in accordance with the provisions of any national scheme which may hereafter be established, by Order in Council or otherwise, with the object of maintaining an adequate supply of well-trained British seamen, or, pending the establishment of such scheme, in accordance with the provisions of any interim scheme approved by the Board of Education ; or

(iii.) who is above the age of sixteen years and either—

(*a*) has passed the matriculation examination of a university of the United Kingdom or an examination recognised by the Board of Education for the purposes of this section as equivalent thereto ; or

(*b*) is shown to the satisfaction of the Local Education Authority to have been up to the age of sixteen under full-time instruction in a school recognised by the Board of Education as efficient or under suitable and efficient full-time instruction in some other manner,

shall be exempt from the obligation to attend continuation schools under this Act unless he has informed the authority in writing of his desire to attend such schools and the authority have prescribed what school he shall attend.

(3.) The obligation to attend continuation schools under this Act shall not apply to any young person—

(i.) who is shown to the satisfaction of the Local Education Authority to be under full-time instruction in a school recognised by the Board of Education as efficient or to be under suitable and efficient full-time instruction in some other manner ; or

(ii.) who is shown to the satisfaction of the Local Education Authority to be under suitable and efficient part-time instruction in some other manner for a number of hours in the year (being hours during which if not exempted he might be required to attend continuation schools) equal to the number of hours during which a

young person is required under this Act to attend a continuation school.

(4.) Where a school supplying secondary education is inspected by a British university, or in Wales or Monmouthshire by the Central Welsh Board, under regulations made by the inspecting body after consultation with the Board of Education, and the inspecting body reports to the Board of Education that the school makes satisfactory provision for the education of the scholars, a young person who is attending, or has attended, such a school shall for the purposes of this section be treated as if he were attending, or had attended, a school recognised by the Board of Education as efficient.

(5.) If a young person who is or has been in any school or educational institution, or the parent of any such young person, represents to the Board that the young person is entitled to exemption under the provisions of this section, or that the obligation imposed by this section does not apply to him, by reason that he is or has been under suitable and efficient instruction, but that the local authority have unreasonably refused to accept the instruction as satisfactory, the Board of Education shall consider the representation, and, if satisfied that the representation is well founded, shall make an order declaring that the young person is exempt from the obligation to attend a continuation school under this Act for such period and subject to such conditions as may be named in the order :

Provided that the Board of Education may refuse to consider any such representation unless the Local Education Authority or the Board of Education are enabled to inspect the school or educational institution in which the instruction is or has been given.

(6.) The Local Education Authority may require, in the case of any young person who is under an obligation to attend a continuation school, that his employment shall be suspended on any day when his attendance is required, not only during the period for which he is required to attend the school, but also for such other specified part of the day, not exceeding two hours, as the authority consider necessary in order to secure that he may be in a fit mental and bodily condition to receive full benefit from attendance at the school : Provided that, if any question arises between the Local Education Authority and the employer of a young person whether a requirement made under this sub-section is reasonable for the purposes aforesaid, that question shall be determined by the Board of Education, and, if the Board of Education determine that the requirement is unreasonable, they may substitute such other requirement as they think reasonable.

(7.) The Local Education Authority shall not require any

young person to attend a continuation school on a Sunday, or on any day or part of a day exclusively set apart for religious observance by the religious body to which he belongs, or during any holiday or half-holiday to which by any enactment regulating his employment or by agreement he is entitled, nor so far as practicable during any holiday or half-holiday which in his employment he is accustomed to enjoy, nor between the hours of seven in the evening and eight in the morning: Provided that the Local Education Authority may, with the approval of the Board, vary those hours in the case of young persons employed at night or otherwise employed at abnormal times.

(8.) A Local Education Authority shall not, without the consent of a young person, require him to attend any continuation school held at or in connection with the place of his employment. The consent given by a young person for the purpose of this provision may be withdrawn by one month's notice in writing sent to the employer and to the Local Education Authority.

Any school attended by a young person at or in connection with the place of his employment shall be open to inspection either by the Local Education Authority or by the Board of Education at the option of the person or persons responsible for the management of the school.

(9.) In considering what continuation school a young person shall be required to attend a Local Education Authority shall have regard, as far as practicable, to any preference which a young person or the parent of a young person under the age of sixteen may express, and, if a young person or the parent of a young person under the age of sixteen represents in writing to the Local Education Authority that he objects to any part of the instruction given in the continuation school which the young person is required to attend, on the ground that it is contrary or offensive to his religious belief, the obligation under this Act to attend that school for the purpose of such instruction shall not apply to him, and the Local Education Authority shall, if practicable, arrange for him to attend some other instruction in lieu thereof or some other school.

Note 10.—The appointed day for the coming into operation of sec. 10 has not yet been fixed (February, 1920).

(1.) By sub-sec. (1) the obligation to attend continuation schools, which will ultimately fall on young persons between the ages of sixteen and eighteen, has been postponed for seven years from the appointed day, as regards all young persons between the ages of sixteen and eighteen, or who attain the age of sixteen before the expiration of the period of seven years; and during the same period those young persons who may be required to attend such schools may have their attendances reduced to 280 hours in one year, instead of giving the full total of 320 hours.

This section lays down the general principle that subject to the mentioned exceptions, every young person between fourteen (or fifteen according to the requirement of the local bye-laws) and eighteen years of age shall attend such continuation school as the Local Education Authority may require.

The expression "young person" is defined in sec. 48. The establishment and maintenance of continuation schools is provided for in sec. 3, above. Provision for enforcing the attendance of young persons at continuation schools is made in sec. 11, and by sec. 12 the Board of Education is empowered to make regulations prescribing various matters relating to such schools.

The maximum period of attendance (320 hours in one year, reducible for a period of seven years to 280 hours in the circumstances indicated in para. (*b*)) may be distributed over the year as may best suit the circumstances of each locality. Thus in agricultural districts attendance in the time of harvest will presumably not be required. Harvest is earlier in the south than in the north, and therefore continuation schools may be closed in the south at a time when they are open in the north and *vice versâ*. So in manufacturing districts, arrangements can be made for attendance when the work of a district most easily permits the absence of young workers. In seaside and other holiday resorts the attendance of young people at these schools may be arranged so as not to be given when business arising from visitors requires all the labour available in the respective districts. The attendances will be distributable as the Local Education Authority, having regard to all the circumstances, consider reasonable, and in that respect the authority will be free from the control of the Board of Education unless the case is brought within sec. 5 (2 and 3) (see p. 354).

As regards attendances in the case of a period less than a year, see note (2) to sec. 12, below.

(3.) The Board of Education are empowered by sec. 28 of this Act to obtain full information respecting every school in England and Wales not in receipt of grants from the Board, and they will thus have available in course of time such knowledge respecting all the schools in the country as will enable them readily to determine those that are efficient. See the provision in sub-sec. (4) for recognising certain secondary schools as efficient.

(5.) Sub-sec. (5) provides for an appeal to the Board of Education by the young person, or by his or her parent, against the refusal of a Local Education Authority to recognise as efficient the school or educational institution attended by that young person.

(6.) Sub-sec. (6) will enable the Local Education Authority, subject to appeal to the Board of Education, to shorten by two hours the hours of employment of a young person on the days of his attendance at a continuation school, in order that the young person may be in a fit mental and bodily condition to receive full benefit from attendance at the school. For penalty for contravening this sub-section, see secs. 11 and 16, below.

(7.) Sub-sec. (7) makes certain limitations on the power of the Local Education Authority to fix the days and hours on which attendance shall be given at continuation schools by young persons. As to days and parts of days exclusively set apart for religious observance, see sec. 7 (1) of the Education Act, 1870, and note thereon. The sub-section relates only to young persons, that is, certain persons between fourteen and sixteen during the first seven years of the operation of the section and between fourteen or fifteen and eighteen after that period. In districts in which the bye-laws fix fifteen years as the maximum age at which parents may require their children to attend school, young persons will be those between fifteen and eighteen

instead of fourteen and eighteen. For penalty for contravening this sub-section, see secs. 11 and 16, below.

(8.) Sub-sec. (8) deals with what are known as "works" schools. Many employers in manufacturing districts have set up "works" schools, *i.e.* schools held in connection with the factory or workshop at which the persons attending them are engaged. Some of these schools are ably staffed and managed, and give a comparatively high class of technical and general education. Certain labour politicians, however, appear to regard such schools with considerable suspicion, mainly on the ground that the working-classes object to being unduly tied up to any employer. It is to meet this suspicion that the section forbids a Local Education Authority to send any young person, without his consent, to a continuation school held in connection with the place of his employment, and requires all such schools to be open to inspection either by the Board of Education or the Local Education Authority at the option of the school managers. It is to be observed that the parent of the young person has no voice in the matter of the attendance of his or her son or daughter at the latter's "works" school. The young person's consent alone is required, and the young person's refusal settles the matter as long as it is maintained.

(9.) Sub-sec. (9) provides that the parent's views as well as the young person's shall be regarded as far as practicable by the Local Education Authority in determining what continuation school a young person under sixteen shall attend. This must be read in connection with sub-sec. (8) when a "works" continuation school is in question. In this case, and in all cases where the young person is over sixteen, the views of the parent need not be sought.

Although the views of parents and young persons in the cases provided for are to be regarded, as far as practicable, they will not necessarily be the determining factor, for the education authority must arrange for the young person to attend those classes which are most adapted for his particular requirements and capabilities; and generally, to make the arrangements which are most likely to secure the best educational results.

A memorandum on the staffing of continuation schools (Circular 1102) was issued by the Board of Education on the 4th April, 1919. "It is calculated that a complete system of continuation schools, if it were brought into existence at the present time, would require the services of not less than 30,000 teachers at the end of three years." The memorandum stated that the suggested minimum initial salary of a full-time graduate master was £180. An Appendix to the memorandum contains suggestions for the curriculum in continuation schools from fourteen to sixteen and from sixteen to eighteen, and for physical training.

In an earlier Circular (1086), dated 18th December, 1918 (price 3d., obtainable from H.M.'s. Stationery Office, Kingsway, London, W.C. 2), the report is set out of a committee appointed by the Board of Education to advise as to the buildings which will be required for compulsory continuation schools. It is suggested that a great many existing buildings of brick or stone and particularly technical schools, disused elementary schools, and occupied elementary schools can be made available for continuation schools. It is stated that the cost of new buildings at pre-war prices will be about £30 per school place or £6 per student in attendance; and that the cost of equipment will be about £6 per school place or £1 4*s.* per student in attendance. These amounts must be very largely increased for any provision that may have to be made in the near future.

Enforcement of Attendance at Continuation Schools.

11.—(1.) If a young person fails except by reason of sickness or other unavoidable cause, to comply with any requirement imposed upon him under this Act for attendance at a continuation school, he shall be liable on summary conviction to a fine not exceeding five shillings, or, in the case of a second or subsequent offence, to a fine not exceeding one pound.

(2.) If a parent of a young person has conduced to or connived at the failure on the part of the young person to attend a continuation school as required under this Act, he shall, unless an order has been made against him in respect of such failure under section ninety-nine of the Children Act, 1908, be liable on summary conviction to a fine not exceeding two pounds, or, in the case of a second or subsequent offence, whether relating to the same or another young person, to a fine not exceeding five pounds.

Note 11.—The "appointed day" for the coming into operation of sec. 11 has not yet been fixed (February, 1920).

If a young person fails to attend at a continuation school except by reason of sickness or other unavoidable cause, he will be liable to a fine under the above section. In ordinary cases where nothing but a fine is provided, if the fine is not paid the case comes under sec. 5 of the Summary Jurisdiction Act, 1884, which enacts that where no method for the recovery of a penalty or fine is provided secs. 19 and 21 of the Summary Jurisdiction Act, 1848, as amended by sec. 21 of the Summary Jurisdiction Act, 1879, shall apply to the recovery of such penalty or fine.

The enactments referred to provide for the issue of warrants of distress and in default of distress for imprisonment. As to distress warrants see the notes on pp. 58 and 93-4.

A young person, however, of under sixteen years of age comes under the procedure laid down in the Children Act, 1908. Sec. 99 of that Act, provides as follows :—

Children Act, 1908, *sec.* 99.

(1.) Where a child or young person ("young person" for the purposes of the Children Act means a person who is fourteen years of age or upwards and under sixteen years of age (sec. 131)), is charged before any court with any offence for the commission of which a fine, damages, or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages, or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

(2.) Where a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3.) Where a court of summary jurisdiction thinks that a charge against a child or young person is proved, the court may make an

order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to the conviction of the child or young person.

(4.) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(5.) Any sums imposed and ordered to be paid by a parent or guardian under this section, or on forfeiture of any such security as aforesaid, may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

(6.) A parent or guardian may appeal against an order under this section—

(*a*) if made by a court of summary jurisdiction to a court of quarter sessions; and

(*b*) if made by a court of assize or a court of quarter sessions to the Court of Criminal Appeal in accordance with the Criminal Appeal Act, 1907, as if the parent or guardian against whom the order was made had been convicted on indictment, and the order were a sentence passed on his conviction.

As to costs, see sec. 101 of the Children Act. By sec. 106 of the same Act, where a child or young person is liable to be imprisoned in default of payment of a fine, the court may, in lieu of sentencing him to imprisonment or committing him to prison, order that he be committed to custody in a place of detention provided under the Act (see sec. 108), and named in the order, for such term as may be specified in the order, not exceeding the term for which he might, but for the Children Act, be sentenced to imprisonment or committed to prison, nor in any case exceeding one month.

For the period of seven years, the provisions of the Education Act, 1918, relating to continuation schools will be in abeyance as regards young persons over sixteen and under eighteen years of age. When those provisions become applicable to such persons, the modified procedure of the Children Act will not apply to them, and in default of payment of any fine they will become liable to imprisonment like ordinary defaulters.

The parent not only becomes liable to pay the fine of his child in the circumstances indicated above, but he will be liable on a second or subsequent offence to a penalty not exceeding £5 if he can be shewn to have conduced to or connived at the failure on the part of the young person to attend a continuation school.

As to the meaning of the words "conduce to," Lord Campbell, C.J., said: "According to the received meaning of the word 'conduce,' I think that what has 'conduced to' an effect must in some sense have caused it or contributed to it": *Cunnington* v. *Cunnington* (1859), 28 L.J., P. & M., on p. 102."

"*Connive at*," seems to imply something less than "causing" or "contributing to" the failure. It has in it the idea of being an accessory to the failure on the part of the young person, before that failure occurred; a wilfully refusing to see; an affecting not to see; acquiescence in; or wilfully abstaining from taking steps to prevent the failure: cf. *Gipps* v. *Gipps*, 11 H.L. Cases on p. 14, per Lord Westbury, L.C.; 33 L.J., P. & M., 161.

Administrative Provisions Relating to Continuation Schools.

12.—(1.) The Board of Education may from time to time make regulations prescribing the manner and form in which notice is to be given as to the continuation school (if any) which a young person is required to attend, and the times of attendance thereat, and as to the hours during which his employment must be suspended, and providing for the issue of certificates of age, attendance and exemption, and for the keeping and preservation of registers of attendance, and generally for carrying into effect the provisions of this Act relating to continuation schools.

(2.) For the purposes of the provisions of this Act relating to continuation schools, the expression "year" means in the case of any young person the period of twelve months reckoned from the date when he ceased to be a child, or any subsequent period of twelve months.

Note 12.—The "appointed day" for the coming into operation of this section has not yet been fixed (February, 1920).

(1.) The Regulations to be made by the Board of Education under this section have not yet been published.

(2.) A "child" becomes a "young person" and ceases to be a "child" for the purposes of this Act when his parents cease to be under an obligation to cause him to receive efficient elementary instruction or to attend school under the enactments relating to elementary education and the bye-laws made thereunder: see sec. 48, p. 426. This will generally be at the end of the school term in which the child attains the age of fourteen, or such older age, not exceeding fifteen, as the bye-laws of the child's school district may fix: see sec. 8 (2) above. For penalty for contravening the provisions in this section as to employment, see sec. 16, below.

The effect of the sub-section read with sec. 10 (1), is that if a child attains fourteen on the 6th of June and his school term ends on the 31st July, he will have to attend a continuation school for 320 hours between the 1st of August and the following 31st July, and the same number of hours in each year till the 31st July after he attains seventeen. The period between that 31st July and the following 6th June (when he will be eighteen), will then be a period of less than a year, and under sec. 10 (1) he will be required to attend during that period such number of hours as the Local Education Authority having regard to all the circumstances may consider reasonable.

Amendment of 3 *Edw.* VII., *c.* 45 *&* 4 *Edw.* VII., *c.* 15.

13.—(1.) The Employment of Children Act, 1903, so far as it relates to England and Wales, shall be amended as follows:—

(i.) For sub-section (1) of section three the following sub-section shall be substituted—

"A child under the age of twelve shall not be employed; and a child of the age of twelve or

upward shall not be employed on any Sunday for more than two hours, or on any day on which he is required to attend school before the close of school hours on that day, nor on any day before six o'clock in the morning or after eight o'clock in the evening :

" Provided that a Local Authority may make a bye-law permitting, with respect to such occupations as may be specified, and subject to such conditions as may be necessary to safeguard the interests of the children, the employment of children of the age of twelve or upwards before school hours and the employment of children by their parents, but so that any employment permitted by bye-law on a school day before nine in the morning shall be limited to one hour, and that if a child is so employed before nine in the morning he shall not be employed for more than one hour in the afternoon."

(ii.) In sub-section (2) of section three, which prohibits the employment of a child under the age of eleven years in street trading, the words " under the age of eleven years " shall be repealed :

(iii.) For section twelve the following section shall be substituted :—

" Except as regards the City of London, the powers and duties of a local authority under this Act shall be deemed to be powers and duties under Part III. of the Education Act, 1902, and the provisions of the Education Acts for the time being in force with regard to those powers and duties and as to the manner in which the expenses of an authority under that Part of that Act shall be paid shall apply accordingly " :

(iv.) For the definition of the expression " local authority " there shall be substituted the following definition :—

" The expression ' local authority ' means in the case of the City of London the mayor, aldermen, and commons of that city in common council assembled and elsewhere the Local Education Authority for the purposes of Part III. of the Education Act, 1902."

(2.) The Prevention of Cruelty to Children Act, 1904, so far as it relates to England and Wales, shall be amended as follows :—

(i.) In paragraph (*b*) of section two, which restricts the employment of boys under the age of fourteen years

and of girls under the age of sixteen years for the purpose of singing, playing or performing, or being exhibited for profit, or offering anything for sale, between nine p.m. and six a.m., "eight p.m." shall be substituted for "nine p.m." so far as relates to children under fourteen years of age :

(ii.) In paragraph (*c*) of section two, which restricts the employment of children under eleven years for the purpose of singing, playing or performing, or being exhibited for profit, or offering anything for sale, twelve years shall be substituted for eleven years:

(iii.) In section three, which relates to licences for the employment of children exceeding ten years of age, the age of twelve years shall be substituted for the age of ten years :

(iv.) A licence under section three to take part in any entertainment or series of entertainments, instead of being granted, varied, added to, or rescinded as provided by that section, shall be granted by the Local Education Authority for the purposes of Part III. of the Education Act, 1902, of the area in which the child resides, subject to such restrictions and conditions as are prescribed by rules made by the Board of Education, and may be rescinded by the authority of any area in which it takes effect or is about to take effect if the restrictions and conditions of the licence are not observed, and, subject as aforesaid, may be varied or added to by that authority at the request of the holder of the licence :

(v.) The holder of a licence shall at least seven days before a child takes part in any entertainment or series of entertainments furnish the Local Education Authority of the area in which the entertainment is to take place with particulars of the licence and such other information as the Board of Education may by rules prescribe, and if he fails to furnish such particulars and information as aforesaid he shall be liable on summary conviction to a fine not exceeding five pounds :

(vi.) Sub-sections (3) and (4) of section three shall cease to apply with respect to licences to take part in an entertainment or series of entertainments :

(vii.) If the applicant for a licence or a person to whom a licence has been granted feels aggrieved by any decision of a Local Education Authority, he may appeal to the Board of Education, who may there-

upon exercise any of the powers conferred on a Local Education Authority by this section :

(viii.) The provisions of this sub-section shall not apply to any licence in force on the appointed day :

(ix.) References to the Employment of Children Act, 1903, shall be construed as references to that Act as amended by this Act.

Note 13.—Paras. (i.) and (ii.) of sub-sec. (1) came into operation on the 1st April, 1920; paras. (iii.) and (iv.) on the 1st April, 1919.

Sub-sec. (2) (except para. (iii.)) came into operation on the 1st April, 1920; para. (iii.) will come into operation on the 8th August, 1921 (see Appendix, p. 633).

(1.) The Employment of Children Act, 1903, as amended by sec. 13 is set out at p. 240.

Sec. 3 (1) of the Employment of Children Act, 1903, probihited the employment of children between 9 p.m. and 6 a.m., subject to the power of the local authority by bye-law to vary the hours, either generally or for any specified occupation. The substituted sub-sec. (1) (i.) will prohibit all employment of children under twelve and, above that age, distinguishes between days when the school meets and days when it does not meet. On the days when the school does not meet, the period of employment is shortened by one hour, ending at 8 p.m. instead of 9 p.m. ; and on the days when the school does meet, a child may not be employed, except after school hours and before 8 p.m. This new enactment is subject to the proviso which follows it and also to the enactment in sec. 15, below.

The question whether a child "of twelve or upwards" in sub-sec. 1 (i.) means a child between the age of twelve and fourteen, or between twelve and the end of the school term in which he attains the age of fourteen (sec. 8 (1) and sec. 9 (1) of the Education Act, 1918), or the age of fifteen, if the Local Education Authority of the child's district has fixed fifteen as the maximum age up to which parents must send their children to school, under the powers of sec. 8 (2), depends on whether the definition of "child" in sec. 14 (p. 246) applies ; or that in sec. 48 of this Act. The view apparently taken at the Board of Education is that the definition of child in the Act of 1903 should apply.

Sub-sec. (1) (i.) does not appear to prevent children of twelve and upwards from carrying newspapers for distribution on Sundays (which seemed to be a point with several speakers when the Bill was in Committee in the House of Commons ; but it will practically forbid boys between twelve and fourteen (or fifteen, as the case may be) from carrying clubs on golf links on Sundays.

The proviso in sub-sec. (1) (i.) was not in the Bill as introduced, but was added after a discussion in Committee. It enables local authorities by bye-law to relax the rigour of the preceding enactment and to enable children to be employed to a limited extent. In harvest time, for instance, which is usually a time of school holidays, bye-laws may enable children to work for their parents at the times in which they have hitherto been usually employed in agricultural districts. The proviso will also enable them to be employed for various domestic purposes which, without the proviso, might not have been legally practicable.

As to the meaning of the words "employ" and "employment," as used in the Education Acts in reference to children, see sec. 48 (2), on p. 427.

((1) ii.) The effect of the alteration made in sec. 3 (2), of the Employment of Children Act, 1903, will be to prohibit the employment of children under fourteen in street trading.

((1) iii. and iv.) By these alterations the Local Education Authority may exercise through their education committees under sec. 17 of the Education Act, 1902, all the powers and duties of a local authority under the Employment of Children Act, 1903. The City of London, however, is an exception to the new general rule and the Common Council remains the local authority for the purposes of the Employment of Children Act, 1903.

(2.) The Prevention of Cruelty to Children Act, 1904, is set out on p. 247.

((2.) iii. and iv.). With regard to these paragraphs see the Employment of Children in Entertainments Rules [S.R.O. No. 21] and the Board of Education Circular of 20th January, 1920, in the Appendix, pp. 614 to 625.

Prohibition against Employment of Children in Factories, Workshops, Mines and Quarries.

14. No child within the meaning of this Act shall be employed—

(*a*) in any factory or workshop to which the Factory and Workshop Acts, 1901 to 1911, apply ; or

(*b*) in any mine to which the Coal Mines Act, 1911, applies ; or

(*c*) in any mine or quarry to which the Metalliferous Mines Acts, 1872 and 1875, apply ;

unless lawfully so employed on the appointed day ; and those Acts respectively shall have effect as respects England and Wales as if this provision, so far as it relates to the subject-matter thereof, was incorporated therewith.

Note 14.—The appointed day for the coming into operation of this section has not yet been fixed (February, 1920).

For the definition of "child," see sec. 48.

The provisions of the section are partly consequential upon the alterations to be made by sec. 8, above, namely the abolition of half time employment and the requirement that all children shall attend school full time. The prohibition in sec. 14, however, will extend not only to school days, but also to the employment of children out of their school hours in factories, workshops and mines.

Children lawfully employed on the appointed day are excepted.

For penalty for contravening the provisions of this section, see sec. 16 (*a*), below.

Further Restrictions on Employment of Children.

15.—(1.) The Local Education Authority, if they are satisfied by a report of the school medical officer or otherwise that any child is being employed in such a manner as to be prejudicial to his health or physical development, or to render him unfit to obtain the proper benefit from his education, may either prohibit, or attach such conditions as they think fit to, his employment in that or any other manner, notwithstanding that the employment may be authorised under the other provisions of this Act or any other enactment.

(2.) It shall be the duty of the employer and the parent of any child who is in employment, if required by the Local Education Authority, to furnish to the authority such information as to his employment as the authority may require, and, if the parent or employer fails to comply with any requirement of the Local Education Authority or wilfully gives false information as to the employment, he shall be liable on summary conviction to a fine not exceeding forty shillings.

Note 15.—This section came into operation the 8th August, 1918.

The Local Education Authority have to be "satisfied" by the school medical officer's report that the employment of the child is such as to prejudice, etc., etc., before they regulate his employment in the manner prescribed by the section. They must therefore consider the report carefully and they should pay heed to it. Provided they do this they are not absolutely bound to follow it, and they cannot be compelled by the Court to do so. They have to be satisfied and if acting as reasonable men, they refuse to be satisfied, the Court cannot make them be satisfied: cf. *R.* v. *Welby, Ex parte Bird* (*Times*, 28th January, 1899).

It is submitted that the requirement of the authority must be reasonable. The fine, if not paid, may be followed by imprisonment, see the note to sec. 11 above.

Also see the note to sec. 13 above and to the Employment of Children Act, 1903, p. 239. Valuable information on the subject of the employment of children is given in the chapter on the Control of Juvenile Employment contained in the report for 1917 by the Chief Medical Officer of the Board of Education, p. 138 (Cd. 9206 of 1918, price 1s.).

Penalties on Illegal Employment of Children and Young Persons.

16. If any person—

(*a*) employs a child in such a manner as to prevent the child from attending school according to the Education Acts and the bye-laws in force in the district in which the child resides; or

(*b*) having received notice of any prohibition or restriction as to the employment of a child issued by a Local Education Authority under this Act, employs a child in such a manner as to contravene the prohibition or restriction; or

(*c*) employs a young person in such a manner as to prevent the young person attending a continuation school which he is required to attend under this Act; or

(*d*) employs a young person at any time when, in pursuance of any requirement under this Act issued by a Local Education Authority, the employment of that young person must be suspended;

he shall be deemed to have employed the child or young person in contravention of the Employment of Children Act, 1903, and sub-sections (1) and (2) of section five and section six

and section eight of that Act shall apply accordingly as if they were herein re-enacted and in terms made applicable to children and young persons within the meaning of this Act as well as to children within the meaning of that Act.

Note 16.—This section (except paras. (*c*) and (*d*)) came into operation on the 8th August, 1918. Paras. (*c*) and (*d*), are not yet in operation (February, 1920).

"Employ" is defined in sec. 48 (2) of this Act.

The provisions of the Education Acts relating to school attendance will be found in sec. 74 of the Education Act, 1870, and sec. 6 Education Act, 1900.

This section consolidates the law relating to the illegal employment of children. Para. (*a*) supersedes secs. 5, 6, and 9 of the Elementary Education Act, 1876, the first paragraph of sec. 4 of the Elementary Education Act, 1880, and sec. 2 of the Elementary Education (School Attendance) Act, 1893; para. (*b*) is directed against a contravention of the new provision in sub-sec. (1) of sec. 15; para. (*c*) prohibits the employment of young persons at times when they are required to attend continuation schools under sec. 10 ;and para. (*d*) is directed toward securing the freedom from employment required by sub-sec. (4) of sec. 10. The Employment of Children Act, 1903, will be found on p. 238.

In *Neave* v. *Hills* (17 L.G.R. 485) it was held that a boy of twelve could not be kept at home, contrary to school byelaws, to look after younger children and thus enable his parents to work all day on the land.

Extension of Powers and Duties.

Power to Promote Social and Physical Training.

17. For the purpose of supplementing and reinforcing the instruction and social and physical training provided by the public system of education, and without prejudice to any other powers, a Local Education Authority for the purposes of Part III. of the Education Act, 1902, as respects children attending public elementary schools, and a Local Education Authority for the purposes of Part II. of that Act as respects other children and young persons and persons over the age of eighteen attending educational institutions, may, with the approval of the Board of Education, make arrangements to supply or maintain or aid the supply or maintenance of—

(*a*) holiday or school camps, especially for young persons attending continuation schools;

(*b*) centres and equipment for physical training, playing fields (other than the ordinary playgrounds of public elementary schools not provided by the Local Education Authority), school baths, school swimming baths;

(*c*) other facilities for social and physical training in the day or evening.

Note 17.—This section came into operation on the 8th August, 1918.

Sec. 13 of the Education (Administrative Provisions) Act, 1907, gave to Local Education Authorities power to provide, for children

attending public elementary schools, vacation schools, play centres, or other means of recreation during their holidays, or at such other times as the Local Education Authority prescribed.

By the same section those authorities were required to provide for the medical inspection of school children, and a power was given to them to make arrangements with the sanction of the Board of Education for attending to the health and physical condition of the children educated in public elementary schools. In view of those provisions the Board of Education appointed a medical officer of its own to advise the Board as to the steps which they should take to carry out their duties under sec. 13.

Ever since 1871, physical training has had a place in the Code of Regulations for public elementary schools, but since the passing of sec. 13 of the Education (Administrative Provisions) Act, 1907, much more time than before has been devoted to such training. In 1909 the Board issued a syllabus of physical exercises to be used in all public elementary schools. The medical officer of the Board has devoted much attention to the subject in his annual reports. See especially the chapter on physical education in his annual report for 1917 to the Board of Education (Cd. 9206 : 1918), pp. 112-125. Sir George Newman says there that a daily lesson of not less than twenty minutes should be given as a rule in every school. Two lessons a week should be devoted to games, dancing, or recreative exercises; and three should be devoted to Tables of Exercises. Suitable dancing is a necessary part of physical education for girls and, to a less extent, for boys; national folk and country dances are the dances recommended. Whenever practicable, children should learn to swim. Camping is strongly advised, and useful notes are given as to the site, equipment, size and other points relating to camps for children and young persons. A good camp is one of the most healthy forms of holiday, promoting growth and physical fitness, while indirectly it has the strongest educative influence in developing resource, initiative, and unselfishness.

Doubts, however, arose from time to time as to the powers of Local Education Authorities to spend money for the purposes indicated in sec. 13 (1) (*a*) of the Act of 1907. The object of sec. 17 of the present Act is not only to remove those doubts but at the same time to extend the powers of the authorities in providing facilities for social and physical training; and to give to Local Education Authorities for higher education, for the benefit of children and young persons over the age of eighteen attending secondary and continuation schools and technical institutions, the same powers in the above respects as are possessed by the authorities for elementary education for the benefit of children attending elementary schools.

Medical Inspection of Schools and Educational Institutions.

18.—(1.) The Local Education Authority for the purposes of Part II. of the Education Act, 1902, shall have the same duties and powers with reference to making provision for the medical inspection and treatment of children and young persons attending—

(i.) secondary schools provided by them;

(ii.) any school to the governing body of which, in pursuance of any scheme made under the Welsh Intermediate Education Act, 1889, any payments are made out of any general fund administered by a Local Education Authority as a governing body under

that Act, and any school of which a Local Education Authority are the governing body under that Act ;

(iii.) continuation schools under their direction and control ; and

(iv.) such other schools or educational institutions (not being elementary schools) provided by them as the Board direct ;

as a Local Education Authority for the purposes of Part III. of the Education Act, 1902, have under paragraph (*b*) of subsection (1) of section thirteen of the Education (Administrative Provisions) Act, 1907, with reference to children attending public elementary schools, and may exercise the like powers as respects children and young persons attending any school or educational institution, whether aided by them or not, if so requested by or on behalf of the persons having the management thereof.

(2.) The Local Education Authorities (Medical Treatment) Act, 1909, shall apply where any medical treatment is given in pursuance of this section as it applies to treatment given in pursuance of section thirteen of the Education (Administrative Provisions) Act, 1907.

Note 18.—This section came into operation on the 8th August, 1918, "except far as it imposes a duty on Local Education Authorities." Any part of the section not already in operation came into operation on the 1st April, 1920.

The powers and duties of Local Education Authorities with regard to the medical inspection of children in elementary schools will be found in sec. 13 of the Education (Administrative Provisions) Act, 1907 ; the Local Education Authorities (Medical Treatment) Act, 1909, and sec. 2 (1) (*b*) of the Education Act, 1918. It is the duty of Local Education Authorities to provide for the medical inspection of children at the times specified in sec. 13 of the Act of 1907. They had the power—it did not amount to a duty under the Act of 1907, but by sec. 2 (1) (*b*) of the Act of 1918, it was made their duty—to make such arrangements as may be sanctioned by the Board of Education for attending to the health and physical condition of the children educated in the public elementary schools. Parents are not bound to accept this treatment for their children, but if they do accept it they are liable to pay for it. (*See the note on pp.* 271-2.)

By sec. 1 of the Act of 1909, provision is made to enable local authorities to recover from parents the cost of the medical treatment given to children, where the parents are in a position to pay.

Sec. 18 gives to higher education authorities the same powers and duties with regard to children and young persons educated at secondary, continuation, and other schools for higher education as Local Education Authorities for the purposes of Part III. have in regard to the children of elementary schools ; the parents of those children and young persons are entitled to refuse the treatment for their children but if they accept it they are liable to pay for it.

The Education (Administrative Provisions) Act, 1907, will be found at p. 262. The Local Education Authorities (Medical Treatment) Act, 1909, will be found at p. 333.

Nursery Schools.

19.—(1.) The powers of Local Education Authorities for the purposes of Part III. of the Education Act, 1902, shall include power to make arrangements for—

(*a*) supplying or aiding the supply of nursery schools (which expression shall include nursery classes) for children over two and under five years of age, or such later age as may be approved by the Board of Education, whose attendance at such a school is necessary or desirable for their healthy physical and mental development ; and

(*b*) attending to the health, nourishment, and physical welfare of children attending nursery schools.

(2.) Notwithstanding the provisions of any Act of Parliament the Board of Education may, out of moneys provided by Parliament, pay grants in aid of nursery schools, provided that such grants shall not be paid in respect of any such school unless it is open to inspection by the Local Education Authority, and unless that authority are enabled to appoint representatives on the body of managers to the extent of at least one-third of the total number of managers, and before recognising any nursery school the Board shall consult the Local Education Authority.

Note 19.—This section came into operation on the 8th August, 1918.

The Local Education Authorities for the purposes of Part III. of the Education Act, 1902, are set out in sec. 1 of that Act.

(1.) The above section empowers the authorities not only to provide nursery schools themselves, but also to contribute towards nursery schools which private persons or bodies have provided or may provide. If a private nursery school has been established in any town and the Local Education Authority sees that it is doing good work and requires help, they may give that help under this section.

Nursery schools are distinct from the day nurseries, or crèches, to which smaller children for the most part under two years of age are taken for the day, whilst their mothers are at work, and sometimes for several days and nights together.

It is not desirable as a general rule that children should attend the nursery schools before they are three years old. They cannot be admitted below the age of two years and they may not be retained, as a general rule, after they attain five years.

There is no obligation upon parents to send their children to nursery schools and those schools do not rank as public elementary schools within the meaning of the Education Acts.

(2.) Before recognising any nursery school, the Board of Education are to consult the Local Education Authority. This does not give to the authority any right to determine the decision of the Board in the matter. They may advise the Board but they cannot direct the action which the Board are to take.

Regulations for Nursery Schools (including Regulations for payment of grant in respect of those schools), dated 5th March, 1919, have been issued by the Board of Education. They can be purchased (price 1d.) through any bookseller or directly from H.M.'s Stationery Office, Imperial House, Kingsway, London, W.C. 2. The Regulations are

prefixed by a long explanatory memorandum dealing with (*a*) the physical care of the child; (*b*) its mental and social training; (*c*) the necessary administrative arrangements, the site, premises and equipment, the age of admission and leaving, the size of the school, the staffing and other ancillary matters.

Grants in aid will be payable for nursery schools conducted in accordance with the regulations. Local Education Authorities will be paid at the rate of one-half of their net expenditure on supplying or aiding the supply of nursery schools. Grant at the same rate will be paid for nursery schools provided by voluntary managers. The first expenditure taken into account for grant will be that incurred during the year ending 31st March, 1919, and grant will first be payable during the year commencing 1st April, 1919.

Education of Physically Defective and Epileptic Children.

20. A Local Education Authority shall make arrangements under the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914, for ascertaining what children in their area are physically defective or epileptic within the meaning of those Acts, and the provisions of the Elementary Education (Defective and Epileptic Children) Act, 1914, relating to mentally defective children, shall be extended so as to apply to physically defective and epileptic children, and accordingly that Act shall have effect as if references therein to mentally defective children included references to physically defective and epileptic children.

Note 20.—This section came into operation on the 1st April, 1920.

The Elementary Education (Defective and Epileptic Children) Act, 1899, will be found at p. 457; the Elementary Education (Defective and Epileptic Children) Act, 1914, amended as directed by the above section, will be found at p. 472.

By sec. 1 of the former Act the Local Education Authority are enabled to make arrangements for ascertaining (*a*) what children in their district, not being imbecile or merely dull or backward, are by reason of mental or physical defect incapable of receiving proper benefit from the instruction in the ordinary public elementary schools, but are not incapable by reason of such defect of receiving benefit from instruction in special classes or schools; and (*b*) what children in their district not being idiots or imbeciles, are unfit by reason of severe epilepsy to attend the ordinary public elementary schools.

By sec. 31 of the Mental Deficiency Act, 1913, the Local Education Authority are required to make arrangements for ascertaining what children within their area are defective children within the meaning of that Act (*i.e.* idiots, imbeciles, feeble-minded persons, moral imbeciles); and for ascertaining which of such children are incapable by reason of mental defect of receiving benefit or further benefit from instruction in special schools or classes (see p. 470).

By sec. 20 of the Education Act, 1918, the duty is now placed on the Local Education Authority of ascertaining what children are physically defective or epileptic within the meaning of the two Acts first mentioned in this note.

Provisions for the education of mentally defective, physically defective, and epileptic children are made in sec. 2 of the Act of 1899 (see p. 460), and sec. 1 of the Act of 1914 (see p. 472), as amended by sec. 20, above.

Powers for the Education of Children in Exceptional Circumstances.

21. Where a Local Education Authority for the purposes of Part III. of the Education Act, 1902, are satisfied in the case of any children that, owing to the remoteness of their homes or the conditions under which the children are living, or other exceptional circumstances affecting the children, those children are not in a position to receive the full benefit of education by means of the ordinary provision made for the purpose by the authority, the authority may, with the approval of the Board of Education, make such arrangements, either of a permanent or temporary character, and including the provision of board and lodging, as they think best suited for the purpose of enabling those children to receive the benefit of efficient elementary education, and may for that purpose enter into such agreement with the parent of any such child as they think proper :

Provided that where a child is boarded out in pursuance of this section the Local Education Authority shall, if possible, and, if the parent so requests, arrange for the boarding out being with a person belonging to the religious persuasion of the child's parents.

Note 21.—This section came into operation on the 8th August, 1918.

It was foreshadowed in the Bill for the Education (Administrative Provisions) Act, 1911, which proposed, by clause 4, to provide lodging near their school for children living in distant parts of the school area. But the clause was opposed in Parliament and was withdrawn from the Bill on that occasion.

The Local Education Authorities for the purposes of Part III. of the Education Act, 1902, are set out in sec. 1 of that Act.

Sec. 21 deals only with children who are to attend at public elementary schools. It enables the Local Education Authority to make the arrangements contemplated by the section, *e.g.* for children whose parents live in districts far away from schools, or for children who have lost one or both parents, or who have been deserted by their parents, and generally children who are prevented by any exceptional circumstances whatever from being in a position to receive the full benefit of education by means of the ordinary provision made by the education authority. Under sec. 23 of the Education Act, 1902, conveyances or travelling expenses for children or teachers maybe provided by the Local Education Authority. See also sec. 14 of the Education (Administrative Provisions) Act, 1907; and sec. 3 of the Elementary Education (Defective and Epileptic Children) Act, 1899, and the legislation as to the provision of meals (p. 260).

The arrangements in the section give a wide latitude to the Authority. They are to be such as that Authority think best suited for the purpose. Board and lodging is the only arrangement specifically mentioned in the section, and the board and lodging favoured by the Board of Education appears to be that which can be obtained in private houses. The section seems wide enough to enable a local authority to erect and furnish hostels or boarding houses of their own near their schools in which in suitable cases children could be housed and looked after; but see the decision in *Dyer* v. *London School Board*

(1902) 2 Ch. 768. Under sec. 6 of this Act two or more Local Education Authorities may co-operate or combine for the purpose of providing necessary buildings. The expenses of the Local Education Authority under this section in so far as they may be incurred for permanent buildings may be borrowed by the Local Education Authority (see p. 192).

It is contemplated by the section that the expenses of boarding and lodging the children may be wholly or partly paid for by their parents. The Local Education Authority may enter into such agreements with the parent of any such child as they think proper. The agreement would not necessarily be limited to the arrangements for board and lodging; it might properly extend to such matters as medical attendance and even the provision of necessary clothing.

Where a child is boarded out with a private family the Local Education Authority are, if possible, and if the parent so requests, to arrange that the child shall be boarded out with a person of the same religious persuasion as the child's parents. A difficulty may arise if the parents of the child belong to different religious denominations. In such a case the parents may themselves agree as to the religious denomination in which they desire to have the child brought up. If they do not agree the father will be entitled to have his wishes in the matter observed if this is practicable. If, however, the parents are not living together and the child lives with his mother and is under her custody and the father makes no representation on the subject, it would be reasonable that the wishes of the mother should be attended to in boarding out the child.

Amendment of Education (Choice of Employment) Act, 1910.

22. Section one of the Education (Choice of Employment) Act, 1910, which confers on certain Local Education Authorities the power of assisting boys and girls with respect to the choice of employment, shall have effect as if "eighteen years of age" were therein substituted for "seventeen years of age."

Note 22.—The amendment has been noted in sec. 1 of the Act, which will be found at p. 340.

This section came into operation on the 27th November, 1918.

Power to Aid Research.

23. With a view to promoting the efficiency of teaching and advanced study, a Local Education Authority for the purposes of Part II. of the Education Act, 1902, may aid teachers and students to carry on any investigation for the advancement of learning or research in or in connection with an educational institution, and with that object may aid educational institutions.

Note 23.—This section came into operation on the 8th August, 1918.

As to the Local Education Authority for the purposes of Part II., &c., see secs. 1 and 3 of the Education Act, 1902.

It is not very clear what sort of "research" is intended to be aided. The point was discussed at length when the Bill was in Committee in the House of Commons. The President of the Board of Education said, "Research is a very wide term. It covers all forms of research—

literary, historical and scientific. This clause was first suggested by a great municipality in the north, which had a first-rate technical college, and desired assistance in the prosecution of a particularly valuable form of industrial research which would be very valuable to the local industries. As things stood, while this technical college could receive assistance from the Board of Education and from the rates for education, it was unable to receive assistance for research, in spite of the fact that, as is well known, a teacher who is doing a little original work is worth much more to his pupils, as there is nothing so stimulating to the pupils who attend the teacher as the knowledge that the teacher is extending the boundaries of knowledge." (Parl. Debates, vol. 107, col. 1535).

Provision of Maintenance Allowances.

24. It is hereby declared that the powers as to the provision of scholarships conferred by sub-section (2) of section twenty-three of the Education Act, 1902, and by section eleven of the Education (Administrative Provisions) Act, 1907, include a power to provide allowances for maintenance.

Note 24.—This section came into operation on the 8th August, 1918. It is merely declaratory of existing law. See the note to sec. 23 (2) of the Education Act, 1902, on p. 207. The scholarships authorised by that sub-section are provided by the local authorities for higher education. Sec. 11 of the Education (Administrative Provisions) Act, 1907, empowers Local Education Authorities to give scholarships to children in public elementary schools. The power to provide allowances for maintenance given by the above section may be used for children and young persons in both elementary and secondary schools. See Grant Regulations No. 17, issued on the 9th December, 1919, providing for Scholarships, Exhibitions, etc., in Science.

Provisions as to Medical Treatment.

25. A Local Education Authority shall not, in exercise of the powers conferred upon them by paragraph (*b*) of sub-section (1) of section thirteen of the Education (Administrative Provisions) Act, 1907, or by this Act, establish a general domiciliary service of treatment by medical practitioners for children or young persons, and in making arrangements for the treatment of children and young persons a Local Education Authority shall consider how far they can avail themselves of the services of private medical practitioners.

Note 25.—This section came into operation on the 8th August, 1918.

Sec. 13 of the Act of 1907 will be found at p. 271. The provisions in the Act of 1918, relating to medical inspection of children and young persons will be found in sec. 2 (1) *b*, p. 347, and sec. 18, p. 379.

L.E.As. are required to arrange for the medical treatment of children attending public elementary schools who appear to need it, and (subject to the sanction of the Board of Education) children and young persons attending continuation schools and secondary schools, pp. 271 and 347. The provision in the above section was made to meet the views of the medical profession, and is intended to prevent Local Education Authorities from employing a few whole time medical men to undertake treatment at the homes of those children or young persons whose health

may from time to time require it. The section requires the education authority to consider how far they can avail themselves of the services of private medical practitioners to do the work. It does not expressly require the authority to employ such practitioners, but the obvious intention of the enactment is that they shall do so where they can. Parents are not bound to accept for their children the treatment provided by the education authorities, and if they do accept it they are liable to pay for it. They are likely to be more willing to accept the treatment if it is to be given by the medical practitioners whom they ordinarily consult and whose professional charges are known to them.

Abolition of Fees in Public Elementary Schools.

Abolition of Fees in Public Elementary Schools.

26.—(1.) No fees shall be charged or other charges of any kind made in any public elementary school, except as provided by the Education (Provision of Meals) Act, 1906, and the Local Education Authorities (Medical Treatment) Act, 1909.

(2.) During a period of five years from the appointed day the Board of Education shall in each year, out of moneys provided by Parliament, pay to the managers of a school maintained but not provided by a Local Education Authority in which fees were charged immediately before the appointed day, the average yearly sum paid to the managers under section fourteen of the Education Act, 1902, during the five years immediately preceding the appointed day.

(3.) Nothing in this Act shall effect the provisions of section nine of the Elementary Education (Blind and Deaf Children) Act, 1893, or of section eight of the Elementary Education (Defective and Epileptic Children) Act, 1899.

Note 26.—This section came into operation on the 1st April, 1919.

(1.) Prior to the passing of the Act of 1918, fees in public elementary schools were regulated by sec. 3 of the Education Act, 1870 (which declared that a school was not an elementary school for the purposes of the Act if the ordinary payments in respect of the instruction, from each scholar, exceeded 9d. a week); by the Education Act, 1891 (which prescribed the conditions of Fee grant); by sec. 14 of the Education Act, 1902; and by the Elementary Education (Fee Grant) Act, 1916.

No school could receive a fee grant unless (1) it charged no fees; or (2) it charged before 1891 more than 10s. a year in fees for each child; or (3) unless the Board of Education had specially approved the charge of fees. The provision in sec. 3 of the Act of 1870 still remains, but the other enactments mentioned in this note, above, have been repealed by the Act of 1918, and the power to charge fees has been abolished, except for meals and for medical treatment. There were some 437 non-provided schools in the country in which fees were charged; and some 21,000 public elementary schools in which no fees were charged. All public elementary schools are now free; but fees may still be charged in secondary schools; see para. 19 on p. 588.

As to the fees payable for medical treatment, see sec. 1 of the Local Education Authorities (Medical Treatment) Act, 1909, and sec. 13 of

the Education (Administrative Provisions) Act, 1907, pp. 333 and 270: and as to the fees payable for meals, see sec. 2 of the Education (Provision of Meals) Act, 1906, p. 257.

(2.) For the five years ending on the 31st March, 1924, the Board of Education will pay to every non-provided public elementary school in which fees were charged immediately prior to the 1st April, 1919 (*i.e.* to each of the 437 schools mentioned in note (1) above), the average yearly sum paid to the managers under sec. 14 of the Education Act, 1902 (now repealed), during the five years prior to that date.

(3.) Sec. 9 of the Elementary Education (Blind and Deaf Children Act, 1893, will be found on p. 452, and sec. 8 of the Elementary Education (Defective and Epileptic Children) Act, 1899, on p. 464.

It appears to have been the custom in some districts for children) from elementary schools to attend "performances" of various kinds and to pay fees to their Local Education Authorities for the privilege. It is announced in the "London Teacher" for the 16th January, 1920, that the London County Council have been advised by an eminent King's Counsel that they cannot legally charge for the attendance of elementary school children at Shakespearean performances, nor in connection with educational visits, swimming, visits to playing fields, school journeys, and school camps.

Administrative Provisions.

Voluntary Inspection of Schools.

27. If the governing body of any school or educational institution not liable to inspection by any Government department, or, if there is no governing body, the headmaster, requests the Board of Education to inspect the school or institution and to report thereon, the Board of Education may do so, if they think fit, free of cost; but this section shall be without prejudice to the provisions relating to the Central Welsh Board contained in sub-section (1) of section three of the Board of Education Act, 1899.

Note 27.—This section came into operation on the 8th August, 1918.

The section seems to aim at the provision of Government inspection for schools of all kinds, both public and private. By sec. 7 (3) of the Education Act, 1870, every public elementary school is open at all times to inspection by any of H.M.'s. Inspectors.

By sec. 3 of the Endowed Schools Act, 1873, the governing body of every endowed school as defined in sec. 6 of the Endowed Schools Act, 1869 (not being a grammar school), which is a public elementary school within the meaning of the Elementary Education Act, 1870, must permit the school to be inspected and the scholars therein to be examined by one of H.M's. Inspectors of Schools.

By sec. 3 of the Board of Education Act, 1899 (p. 115), the Board of Education may by their officers, or by any university or other organisation, inspect any school supplying secondary education and desiring to be so inspected. The present section carries the provisions as to Government inspection a step farther and enables the Board of Education at the request of the governing body or headmaster of any school or institution not liable to government inspection to inspect the school or institution free of cost.

In the Annual Report for 1913-14, of the Board of Education, at p. 10, there is an historical sketch from 1853-1900 of the growth of

the inspection of secondary schools by the State. Under the Act of 1902, there has been a great increase of such inspection, many of the older public schools coming under it. This, however, is partly owing to the fact that about the year 1900 the War Office offered certain privileges to schools which were under regular inspection (Report, 1913-14, p. 29).

For a time the cost of inspection under the Board of Education Act, 1899, was prohibitive to many schools; but that was partly overcome by giving free inspection to schools, whether public or private, that were placed on the "efficient list."

The nature of the "full inspection" of a secondary school is set out at p. 35 of the report referred to, and the advantages of the system of inspection are summarised at p. 44.

The provisions of sec. 27 are not to affect the provisions relating to the Central Welsh Board contained in the proviso to sec. 3 of the Board of Education Act, 1899 (on p. 115), and that Board will still be recognised as the proper organisation for the inspection of any schools established by scheme under the Welsh Intermediate Education Act, 1899, which may desire to be so inspected.

Collection of Information Respecting Schools.

28.—(1.) In order that full information may be available as to the provision for education and the use made of such provision in England and Wales,—

(*a*) It shall be the duty of the responsible person as hereinafter defined, in respect of every school or educational institution not in receipt of grants from the Board of Education, to furnish to the Board of Education in a form prescribed by the Board—

(i.) in the case of a school or educational institution existing at the appointed day, within three months of that day;

(ii.) in the case of a school or educational institution opened after the appointed day, within three months of the opening thereof;

the name and address of the school or institution and a short description of the school or institution:

(*b*) It shall be the duty of every such responsible person when required by the Board of Education to furnish to the Board such further particulars with respect to the school or institution as may be prescribed by regulations made by the Board:

Provided that the Board may exempt from both or either of the above obligations any schools or educational institutions with respect to which the necessary information is already in the possession of the Board or is otherwise available.

(2.) If the responsible person fails to furnish any information required by this section, he shall be liable on summary conviction to a penalty not exceeding ten pounds, and to a penalty not exceeding five pounds for every day on which the failure continues after conviction therefor.

(3.) For the purposes of this section "the responsible person" means the secretary or person performing the duty of secretary to the governing body of the school or institution, or, if there is no governing body, the headmaster or person responsible for the management of the school or institution.

(4.) Any regulations made by the Board of Education under this section with respect to the particulars to be furnished shall be laid before Parliament as soon as may be after they are made.

Note 28.—The "appointed day" on which this section came into operation was the 1st April, 1919.

Local Education Authorities are required by sec. 95 of the Education Act, 1870, to make reports and returns to the Board of Education. See also sec. 13 of the Elementary Education (Defective and Epileptic Children) Act, 1899 (p. 467); and sec. 72 (p. 47), of the Act of 1870, as to the refusal or neglect of managers or teachers to fill up the forms required for returns.

Sec. 28 requires, as regards every existing school or educational institution not in receipt of grants from the Board of Education, that the secretary of the governing body, or the headmaster, or the person responsible for the management, shall send to the Board of Education, within three months after the appointed day, the information required in a form prescribed by the Board. This enactment applies to all private schools.

In the case of schools and educational institutions opened after the appointed day, the information must be supplied within three months after the opening of the school or institution.

On the 24th April, 1919, the Board of Education issued an order prescribing the form, as follows:—

INFORMATION RESPECTING A SCHOOL OR EDUCATIONAL INSTITUTION [EDUCATION ACT, 1918, § 28 (1) (*a*)].

1. *Name and full address of the School or Institution*:

2. *Short description of the School or Institution*:

This description should state—

(*a*) the type of education provided (elementary, secondary, technical, professional, or otherwise); if the education is professional, the industry, business or profession to which the education relates should be stated:

(*b*) the number and sex of the pupils, and usual age of entrance and leaving:

(*c*) whether the school or institution is for day pupils or boarders, or both:

(*d*) whether it is conducted for private profit:

(*e*) the body of persons responsible for its management.

*Signed**.....

Date.....

* The form should be signed by the Secretary or person performing the duty of secretary to the governing body of the school or institution, or if there is no governing body, the headmaster or person responsible for the management of the school or institution.

If the Board of Education wish to have further particulars of any such school or institution they may ask for it and the responsible person must then give it. This further information will be limited to particulars prescribed by the Board of Education in regulations made by them and laid before Parliament.

Sub-sec. (4) of this section provides that any regulations made by the Board of Education under this section shall be laid before Parliament. This provision brings the regulations under the Rules Publication Act, 1893, which enacts that at least forty days before making the regulations, notice of the proposal to make them and of the place where copies of the draft rules may be obtained shall be published in the London Gazette. During those forty days any public body may obtain copies of the draft rules, on payment for the same, and any representations or suggestions made in writing to the Board of Education by a public body interested must be taken into consideration by the Board before settling the rules. On the expiration of the forty days the rules may be made by the Board, either as originally drawn, or as amended by the Board, and they will come into operation forthwith, or at such time as may be prescribed by the regulations.

Provisions with Respect to Appointment of Certain Classes of Teachers.

29.—(1.) Notwithstanding anything in the Education Act, 1902, the appointment of all teachers of secular subjects not attached to the staff of any particular public elementary school and teachers appointed for the purpose of giving practical instruction, pupil teachers, and student teachers, shall be made by the Local Education Authority, and it is hereby declared that the Local Education Authority have power to direct the managers of any public elementary schools not provided by them to make arrangements for the admission of any such teachers to the schools.

(2.) The provisions of sub-section (3) of section seven of the Education Act, 1902, shall apply to any question which arises under this section between the Local Education Authority and the managers of a school.

Note 29.—This section came into operation on the 8th August, 1918.

The appointment of teachers is dealt with in sec. 7 of the Education Act, 1902.

Before the passing of this Act the managers of a voluntary school could not have been compelled to receive such occasional visiting teachers as the teachers of cookery, laundry work, dairy work or even of physical exercises appointed by the Local Education Authority. As these subjects under the new Act (see sec. 2 (1) (*c*)) are to be taught as part of the curriculum of public elementary schools generally and as the teachers are usually part time teachers, it was necessary to secure that they should be admitted to teach in the non-provided schools in the area of their work as well as in the schools provided by the Local Education Authority itself.

As regards pupil teachers and student teachers, the provision in the section will assist the Local Education Authorities in their efforts to train teachers. Those persons receive part of their training by actual teaching in public elementary schools. Sec. 7 (5) of the Education Act, 1902, enacted (among other things) that in any case in which

there are more candidates for the post of pupil teacher than there are places to be filled, the appointment should be made by the Local Education Authority: That part of the enactment is repealed by this Act and the provision in sec. 29, above, is substituted for it. Local Education Authorities can now assign pupil and student teachers, in all cases, to the schools, which the authorities wish them to attend, and, inferentially, it will be the duty of the managers of a non-provided school to report to their Local Education Authority any vacancy arising in the post of pupil teacher in the managers' school. The provision of sec. 7 (5) of the Act of 1902, which enables assistant teachers and pupil teachers to be appointed without reference to religious creed and denomination, is not affected by anything in sec. 29.

Sec. 7 (3) of the Education Act, 1902, provides that if any question arises under that section between the Local Education Authority and the managers of a school not provided by that authority, the question shall be determined by the Board of Education. The principle of that section is extended to the circumstances of sec. 29. See the notes to sec. 7 (3) of the Act of 1902 on p. 153.

Provisions as to Closing of Schools.

30.—(1.) The managers of a public elementary school not provided by the Local Education Authority, if they wish to close the school, shall give eighteen months' notice to the Local Education Authority of their intention to close the school, and a notice under this provision shall not be withdrawn except with the consent of the Local Education Authority.

(2.) If the managers of a school who have given such a notice are unable or unwilling to carry on the school up to the expiration of the period specified in the notice, the school house shall be put at the disposal of the Local Education Authority, if the Authority so desire, for the whole or any part of the period, free of charge, for the purposes of a school provided by them, but subject to an obligation on the part of the authority to keep the school house in repair and to pay any outgoings in respect thereof, and to allow the use of the school house and the school furniture by the persons who were the managers of the school to the like extent and subject to the like conditions as if the school had continued to be carried on by those managers.

The use by the authority of the school house during such period for the purposes of a school provided by them shall not be deemed, for the purposes of section eight of the Education Act, 1902, to constitute the provision of a new school.

Note 30.—This section came into operation on the 8th August, 1918.

By para. (5) of the Third Schedule to the Education Act, 1902, it was the duty of a Local Education Authority under the Education Acts, 1870 to 1902, to provide a sufficient amount of public school accommodation, without payment of fees, in every part of their area

In fulfilling that duty Local Education Authorities had to take into consideration the non-provided schools in their areas that afforded public school accommodation and the closing of any such schools

materially affected the duty of the Local Education Authority in whose area the school was situated. Article 27 (*c*) of the Code of Regulations for public elementary schools provided for this by requiring the managers of voluntary schools to give eighteen months notice of an intention to close the school and also to give the authority the opportunity, if necessary, of taking over and working the school until the expiration of the period of notice.

This is now made a statutory requirement, but it is subject to an obligation on the Local Education Authority to keep the school house in repair and to pay any outgoings in respect thereof. This may require the Local Education Authority to pay not only rates and taxes, but all payments which a tenant would have had to pay under a similar provision under a covenant in an ordinary lease: it may include the obligation to pay a charge in respect of such matters as the reconstruction of drainage (*Antil* v. *Godwin*, 15 T.L.R. 462; 63 J.P. 441), the abatement of nuisance arising from a structural defect (*Foulger* v. *Arding* (1902), 1 K.B. 700), and the cost of paving works incurred under sec. 150 of the Public Health Act, 1875 (*Greaves* v. *Whitmarsh* (1906) 2 K.B. 340; 4 L.G.R. 718), see also *Henman* v. *Berliner* (1918), 2 K.B. 236; 16 L.G.R. 707. In view of their liability under the requirement to pay "outgoings" and the short time during which the premises can be held, Local Education Authorities will do well to consider the position in this respect before they take over under the above section the working of any abandoned non-provided school.

The object of the last paragraph of the section is to avoid the delay connected with the notice of the proposal to provide a new public elementary school and possible appeals by ratepayers to the Board of Education, which the Local Education Authority have to give and meet under sec. 8 of the Education Act, 1902, whenever they propose to provide a new public elementary school in their district.

Grouping of Non-provided Schools of the same Denominational Character.

31. Where there are two or more public elementary schools not provided by the Local Education Authority of the same denominational character in the same locality, the Local Education Authority, if they consider that it is expedient for the purpose of educational efficiency and economy, may, with the approval of the Board of Education, give directions for the distribution of the children in those schools according to age, sex, or attainments, and otherwise with respect to the organisation of the schools; and for the grouping of the schools under one body of managers constituted in the manner provided by sub-section (2) of section twelve of the Education Act, 1902:

Provided that, if the constitution of the body of managers falls to be determined by the Board of Education under that section, the Board shall observe the principles and proportions prescribed by sections six and eleven of that Act; and that, if the managers of a school affected by any directions given under this section request a public inquiry, the Board shall hold a public inquiry before approving those directions.

Note 31.—This section came into operation on the 8th August, 1918.

As to the "grouping of schools," see sec. 6 (3) (*a*) (p. 136), and sec. 12 (p. 162), of the Education Act, 1902, and, as regards London, sec. 2 (1) of the Education (London) Act, 1903 (p. 233).

In their report for the year 1908-9 (p. 10), the Board of Education say—"There are many towns in which the managers of voluntary schools of the same denomination would save large sums of money, both to themselves and to the Local Education Authorities, if they would agree to 'pool' and redistribute their scholars among the available schools. The buildings of many old schools may nowadays be suitable for one department or for a mixed department, but quite unsuitable for three departments. If a school in one parish would agree to take the infants or the older scholars from a neighbouring school in another parish, or if the supporters of voluntary schools in two or more parishes would concentrate their efforts on the provisions of one thoroughly satisfactory school for all the scholars, the problem of making the supply of school premises adequate and satisfactory would in many cases be greatly simplified. Very little use has been made of sec. 12 of the Act of 1902, under which a number of voluntary schools can 'be grouped' under one body of managers."

The powers of the Local Education Authority had not enabled them to compel the "pooling" of two or more non-provided schools in the same neighbourhood and of the same denomination with a view to the better distribution of the children attending them. The powers of sec. 31 will enable those authorities to overcome the opposition of the managers of such schools and to carry out useful re-arrangement of school places.

Secs. 6 (2) and 11 of the Education Act, 1902, relate respectively to the appointment of managers of provided schools and of foundation managers of non-provided schools. See pp. 136 and 159.

Where two or more schools are "pooled" under the powers of sec. 31, the Local Education Authority should endeavour to agree with the respective managers of those schools for the constitution of a new body of managers. In default of agreement, the matter is to be settled by the Board of Education on the principles indicated in sec. 31.

As to public inquiry, see sec. 40 of this Act, p. 409. The concession of a public inquiry will protect the small voluntary schools from undue hardship under a grouping scheme. Many of the smaller schools are denominational schools, and any steps which might lead to their extinction might perhaps be regarded as a disturbance of the party agreement which was arrived at in connection with the passing of the Education Act, 1902, and which the promoters of the present Act have been anxious to maintain. (See note to sec. 33).

Provisions relating to Central Schools and Classes.

32.—(1.) Notwithstanding the provisions of section six of the Education Act, 1902, or, in the case of London, subsection (1) of section two of the Education (London) Act, 1903, as to the appointment of managers, any public elementary school which in the opinion of the Board is organised for the sole purpose of giving advanced instruction to older children may be managed in such manner as may be approved by the Local Education Authority, and, in the case of a school not provided by that authority, also by the managers of the school.

(2.) Notwithstanding anything contained in sections six and eight of the Education Act, 1902, or in section two of

the Education (London) Act, 1903, the provision of premises for classes in practical or advanced instruction for children attending from more than one public elementary school shall not be deemed to be the provision of a new public elementary school, and any class conducted in such premises may be managed in such manner as may be approved by the Local Education Authority.

Note 32.—This section came into operation on the 8th August, 1918.

Sub-sec. (1) facilitates the use of certain schools in ways which might otherwise have been *ultra vires*. To enable it to be applied to any such school, the school must be organized for the sole purpose of giving advanced instruction to older children.

The sub-section does not deal with the difficulty which was successfully raised against the proposals of the Local Education Authority in the case of *Wilford* v. *West Riding of Yorkshire County Council* (1908), 1 K.B. 685; 6 L.G.R. 244, noted under sec. 7 (3), of the Education Act, 1902, pp. 146-7.

Sub-sec. (2) is intended to make more suitable provision for managing central schools. Such schools serve wide areas and require managing bodies chosen on a broader basis than elementary schools serving small areas.

Sec. 6 of the Education Act, 1902, will be found at p. 136. It enacts that when a public elementary school is provided by a Local Education Authority which is a county council, it may have four managers appointed by that council and two appointed by the minor local authority, *i.e.* the council of the borough, urban district or parish; or the parish meeting, if no parish council. If the Local Education Authority is the council of a borough, or urban district, they may appoint, for a school provided by them, as many managers as they think fit.

When the school is not provided by the Local Education Authority, it may have four managers appointed under the trust deed of the school (or the order of the Board of Education); one by the county council and one by the minor local authority, if the county council is the Local Education Authority; but where the authority are the council of a borough or urban district, two by that council.

Sec. 2 (1) of the Education (London) Act, 1903, requires that two-thirds of the managers of every public elementary school provided by the Local Education Authority shall be appointed by the borough council and one-third by the Local Education Authority, due regard being had to the inclusion of women among the managers (p. 233).

Sec. 32 modifies these requirements as to managers, and gives the managers and the Local Education Authorities wider powers in the particular cases mentioned in the section.

The provision in sub-sec. (2) gets rid of the notices and possible objections to the Board of Education which under sec. 8 of the Education Act, 1902, may attend the establishment of a new public elementary school.

Saving for Certain Statutory Provisions.

33. Except as expressly provided by this Act, nothing in this Act shall affect the provisions of the Education Acts relating to public elementary schools not provided by the Local Education Authority or the provisions of Part II. of the Education Act, 1902.

Note 33.—This section came into operation on the 8th August, 1918. It merely states the legal position, without altering it in any way. According to a statement of the President of the Board of Education when the Bill was in Committee, there were apprehensions that the Bill would materially change the settlement of 1902, agreed to by parties in the House of Commons ; and it was in order to reaffirm the principle of that settlement that the above section was enacted.

As to the effect of the Education Act, 1902, on the voluntary schools established under the Education Acts, 1870 to 1900, see the remarks of Lord Haldane, L.C., in *Gillow* v. *Durham C.C.*, 1913, A.C. on p. 64.

Acquisition of Land by Local Education Authority.

34.—(1.) A Local Education Authority may be authorised to purchase land compulsorily for the purpose of any of their powers or duties under the Education Acts, by means of an order submitted to the Board of Education and confirmed by the Board in accordance with the provisions contained in paragraphs (1) to (13) of the First Schedule to the Housing, Town Planning, &c., Act, 1909, and those provisions shall have effect for the purpose, with the substitution of the Board of Education for the Local Government Board, of the Local Education Authority for the local authority, and of references to the Education Acts for references to " this Act " :

Provided that—

(*a*) the Board of Education shall not confirm any such order even when unopposed if they are of opinion that the land is unsuited for the purpose for which it is proposed to be acquired ;

(*b*) an order for the compulsory purchase of land in the administrative county of London shall be subject to the provisions of sub-section (2) of section two of the Education (London) Act, 1903 ;

(*c*) an order for the compulsory purchase of land which by section forty-five of the Housing, Town Planning, &c., Act, 1909, is exempt from compulsory acquisition for the purposes of Part III. of the Housing of the Working Classes Act, 1890, shall be provisional only and shall not have effect unless and until it is confirmed by Parliament.

(2.) The powers given by this section in relation to the compulsory purchase of land by the Local Education Authority shall be in substitution for any other powers existing for that purpose, but without prejudice to any powers conferred by any Provisional Order confirmed by Parliament before the appointed day.

Note 34.—This section came into operation on the 8th August, 1918.

Power for enabling a Local Education Authority to purchase land by agreement is given by secs. 19, 20 and 21 of the Education Act, 1870 (pp. 18, 27 and 28).

Under the clauses relating to the purchase of lands *by agreement*,

parties under disability are empowered to sell and convey the lands or interest in lands required. The compensation to be paid to persons under disability, unless the amount has been determined by the verdict of a jury or by arbitration, or by a surveyor appointed by two justices under the Act, is not to be less than shall be determined by the valuation of two able practical surveyors, one being nominated by each of the parties, or if the two surveyors cannot agree, by the valuation of any such third surveyor as any two justices shall for that purpose nominate.

Regulations for the compulsory purchase of land under sec. 34 were issued by the Board of Education on the 1st January, 1919. A copy of the Order will be found in the Appendix, p. 575. The order sets out by way of recital, the provisions contained in paras. 1-13 of the First Schedule to the Housing, Town Planning, &c., Act, 1909, with the substitutions prescribed by sec. 34 above.

In a Schedule to the Regulations will be found the form of the compulsory order to be made by the Local Education Authority and submitted to the Board of Education, when the authority desire to acquire land compulsorily; see pp. 579-80.

Before the compulsory order is made the requirements of the regulations must be carefully observed and carried out in every detail; and when the order is submitted to the Board of Education the clerk to the council must send with it a statement shewing how the requirements have been complied with. The statement must be in the form set out on p. 581, or to the like effect, and it must be signed by the Clerk to the Council.

In case the amount of compensation to be paid for the land is not agreed, the amount of compensation must be determined in accordance with the requirements of the Acquisition of Land (Assessment of Compensation) Act, 1919, which came into force on the 1st September, 1919. The Act provides three modes of determination

(1.) by an official arbitrator under the Act;
(2.) by the Inland Revenue Commissioners;
(3.) by an arbitrator agreed upon by the parties;

The Arbitration.

The following extracts from the Act require special notice,—

By sec. 1.—(1.) Where by or under any statute (whether passed before or after the passing of this Act) land is authorised to be acquired compulsorily by any Government Department or any local or public authority, any question of disputed compensation, and, where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease, shall be referred to and determined by the arbitration of such one of a panel of official arbitrators to be appointed under this section as may be selected in accordance with rules made by the Reference Committee under this section.

Rules for Assessing Compensation.

Sec. 2 provides as follows:—In assessing compensation, an official arbitrator shall act in accordance with the following rules:—

(1.) No allowance shall be made on account of the acquisition being compulsory:
(2.) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:

(3.) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any bonâ fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration:

(4.) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account:

(5.) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is bonâ fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:

(6.) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

For the purposes of this section, an official abritrator shall be entitled to be furnished with such returns and assessments as he may require.

Sec. 8 provides that nothing in the Act shall prevent, if the parties so agree, the reference of any question as to disputed compensation or apportionment of rent to the Commissioners of Inland Revenue, or to an arbitrator agreed on between the parties.

Rules are laid down for observance by the Commissioners when they are asked to settle the claim for compensation. Either party to a claim for compensation may require the Commissioners of Inland Revenue to assess the value of the land in respect of which the claim arises, and a copy of any such assessment should be sent forthwith by the Commissioners to the other party, and a certified copy of such assessment will be admissible in evidence of that value in proceedings before the official arbitrator, and the officer who made the assessment must attend if the official arbitrator so require, to answer such questions as the official arbitrator may think fit to put to him thereon.

Witnesses.

By sec. 3.—(1) In any proceedings before an official arbitrator, not more than one expert witness on either side shall be heard unless the official arbitrator otherwise directs:

Provided that, where the claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals, or, as the case may be, on the damage suffered by reason of the disturbance may be allowed.

(2.) It shall not be necessary for an official arbitrator to make any declaration before entering into the consideration of any matter referred to him.

. . . . . .

Decision: Case for the High Court.

By sec. 6.—(1.) The decision of an official arbitrator upon any question of fact shall be final and binding on the parties, and the persons claiming under them respectively, but the official arbitrator may, and shall, if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the Court.

(2.) The decision of the High Court upon any case so stated shall be final and conclusive, and shall not be subject to appeal to any other Court.

Costs.

Costs are provided for in sec. 5.—(1.) Where the acquiring authority has made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by an official arbitrator does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made.

(2.) If the official arbitrator is satisfied that a claimant has failed to deliver to the acquiring authority a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the acquiring authority to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by the acquiring authority at the time when in the opinion of the official arbitrator sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer.

The notice of claim shall state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated, and when such a notice of claim has been delivered the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land authorised to be acquired, but shall be liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn, and the amount of such compensation shall, in default of agreement, be determined by an official arbitrator.

(3.) Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has complied with the provisions of the last preceding sub-section, and the sum awarded is equal to or exceeds that sum, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the acquiring authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(4.) Subject as aforesaid, the costs of an arbitration, under this Act shall be in the discretion of the official arbitrator who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and the official arbitrator may in any case disallow the cost of counsel.

(5.) An official arbitrator may himself tax the amount of costs ordered to be paid, or may direct in what manner they are to be taxed.

(6.) Where an official arbitrator orders the claimant to pay the costs, or any part of the costs, of the acquiring authority, the acquiring authority may deduct the amount so payable by the claimant from the amount of the compensation payable to him.

(7.) Without prejudice to any other method of recovery, the amount of costs ordered to be paid by a claimant, or such part thereof as is not covered by such deduction as aforesaid shall be recoverable from him by the acquiring authority summarily as a civil debt.

(8.) For the purposes of this section, costs include any fees, charges, and expenses of the arbitration or award.

On the 14th April, 1919, the Board of Education issued an order made by them with the concurrence of the Lord Chancellor dealing with the costs of Arbitration. That order will be found in the Appendix, p. 582.

Confirmation of the Compulsory Order by the Board of Education.

In January, 1919, the Board of Education issued a circular letter (Form 201 G.) in which they made the following statements :—

An Order made by the authority for the compulsory purchase of land is of no force unless and until it is confirmed by the Board, and in certain cases which are specified in the Education Act, 1918, and in the First Schedule to the Housing, Town Planning, &c., Act, 1909, the Order is provisional only and requires confirmation by Parliament.

Sec. 34 of the Education Act, 1918, provides that the Board of Education shall not confirm an Order for compulsory purchase made by a Local Education Authority, even when unopposed, if they are of opinion that the land is unsuited for the purpose for which it is proposed to be acquired. It is therefore desirable that the Local Education Authority before making an Order should furnish the Board with a plan of the land it is proposed to acquire and should inform them what is the particular purpose for which it is required in order that the Board may inform the authority whether they consider that the land is *primâ facie* suited for the proposed purpose. It should, however, be understood that a preliminary consultation with the Board of Education on this point before the Order is made will not preclude the Board from considering any objections which may be made to the suitability of the land after the Order has been made and in the result of publication.

Where the land is required for the purposes of a new public elementary school, the procedure prescribed by sec. 8 of the Education Act, 1902, should be completed before the Order for compulsory purchase is made.

When applying for the confirmation of an Order the authority should inform the Board if any part of the land it is proposed to acquire is the site of an ancient monument or other object of archæological interest, or the property of any local authority, or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking, or forms part of any park, garden, or pleasure-ground, or is otherwise required for the amenity or convenience of any-dwelling house (sec. 34 (1) (*c*) of the Education Act, 1918).

An application to the Board to confirm an Order made by a Local Education Authority should be accompanied by the following documents :—

(*a*) Two copies of the Order sealed with the seal of the Council authenticated in the usual manner, together with two unsealed copies for purposes of reference.

(*b*) Two copies of the deposited plan of the land which it is proposed to acquire.
(*c*) A certificate from the Clerk to the Council in the enclosed form together with the newspapers therein mentioned.
(*d*) If the information has not previously been furnished a statement of the precise purpose for which the land is required.

Cases on Compulsory Purchase.

The fact that application for a provisional order for the compulsory purchase of land has been made, and that the order has been issued and confirmed by Parliament, does not impose on the authority a legal obligation to purchase the land. Notice of intention to purchase under sec. 20 (2) (*b*) of the Education Act, 1870, created no contract between the parties: *Burgess* v. *Bristol Urban Sanitary Authority*, 50 J. P. 455.

In *Rolls* v. *School Board for London* (L. R. 27 Ch. D. 639; 51 L. T. 567), the school board, in pursuance of powers conferred on them by a provisional order confirmed by Parliament, served on R. the customary notice to treat. Prior to the service and prior to the confirmation of the provisional order by Parliament, the school board had entertained and adopted, subject to the sanction of the Education Department, a proposal from one B., a neighbouring landowner, for exchanging a portion of the land to be acquired by the board from R., for a piece of B.'s land, he undertaking to form the land so to be conveyed to him into a public road. There was evidence to show that such road when made would be advantageous to the school proposed to be erected. It was held on the motion of R. to restrain the board from putting in force their statutory powers with respect to so much of the land comprised in the notice to treat as they proposed to convey to B., that the school board were justified in the course they had taken, and could, if they obtained the sanction of the Education Department, carry out their proposal.

In the case of *Clark* v. *The School Board for London* (L. R. 9 Ch. App. 120; 43 L. J. Ch. 421), an injunction was granted by Vice-Chancellor Malins to restrain the defendants from building on land which they had acquired under an order under this section, in such a manner as to interfere with the rights of an adjoining proprietor with regard to light and air, although the defendants were willing to pay compensation under sec. 68 of the Lands Clauses Consolidation Act. On appeal to the full Court the decision was reversed. The Lord Chancellor said:—The Legislature, in authorising school boards for the public advantage to exercise the large powers conferred upon them, meant to invest in them a discretion answerable to the importance of the case. When for these important purposes compulsory powers of taking land were given to them, he could not but think that it was intended they should have the full benefit of all the compulsory powers contained in the Lands Clauses Acts; that they should be able to erect buildings on the land they acquired upon such a plan, of such a height, and in such a way as they should in the exercise of their discretion think proper. This view was confirmed by the language of secs. 19 and 20 of the Act, which spoke of purchasing any right over land, and said that "land" was to be construed as including "any right over land." These were large words, and according to their reasonable construction, seemed to give to the board the land which they acquired free from any *jus tertii*. The right to light could only be acquired by twenty years' user, and it came strictly within the words "right over land." Such a right, if interfered with, must be the subject of compensation, and the only

question seemed to be in what way that compensation was to be ascertained—whether a purchasing notice must be given by the board, or whether the compensation was to be determined under those sections of the Lands Clauses Acts which relate to land not taken by the promoters of an undertaking, but injuriously affected by their works. The sound view in his opinion was that the construction of the sections of the Lands Clauses Acts which related to compensation was not altered by secs. 19 and 20 of the Education Act. The provisions of sec. 84 of the Lands Clauses Act as to entry on land were inapplicable to such a thing as a right to light. But those clauses which related to compensation for land injuriously affected appeared to be exactly applicable to a right of this kind. There was previous authority for this view in some cases which had been decided upon the Thames Embankment Acts, such as *Maccy* v. *The Metropolitan Board of Works*, before Lord Hatherley, when Vice-Chancellor (32 L. J. Ch. 337).—Lord Justice Mellish said the school board were only to purchase the land necessary for the school, and he thought therefore they had no compulsory power of purchasing any lands not necessary for that purpose. This was made clearer by the use of the words "any right over land." The legislature meant to say—"In order that you may be perfectly unfettered in building your school, you may purchase any right that any one has over the land which you buy;" and sec. 20 gave them power to do this compulsorily if it could not be done by agreement. He agreed in thinking that this made no difference with regard to the course to be adopted to obtain compensation.

Effect of Provisional Order on Restrictive Covenants.

In *Kirby* v. *School Board for Harrogate* ([1896] C. A., 1 Ch. 437; 74 L. T. 6; 65 L. J. Ch. 396; 44 W. R. 144), it was held by the Court of Appeal that when a school board had acquired land by agreement for the purpose of providing a school under the Elementary Education Acts, they could exercise their statutory powers of building without regard to any restrictive convenants affecting the land, in the same manner as if they had acquired the land under compulsory powers. The only remedy of persons whose lands were injuriously affected thereby was to obtain compensation under sec. 68 of the Lands Clauses Consolidation Act, 1845.

In *The London County Council* v. *The London School Board* ([1892] 2 Q. B. 606; 40 W. R. 604), it appeared that under a Provisional Order of the Education Department, confirmed by Parliament, certain land was acquired by the London School Board otherwise than by agreement for the purpose of providing public school accommodation for the district, and in laying out part of the land as a playground, the fence was brought within 20 feet of the centre of a highway. The London County Council instituted proceedings against the school board on the ground that the bringing forward of the fence as stated without the consent of the County Council was in contravention of the Metropolis Management and Building Acts Amendment Act, 1878 (41 & 42 Vict., c. 32). It was alleged that if the fence were set back the playground would not be large enough to comply with the rules for the number of children for whose accommodation the school house was required. The case was dismissed by the magistrate on the ground that Parliament having sanctioned the taking of the land for the purpose of the Elementary Education Acts, the school board were entitled and bound to use the whole of the ground so taken for the purposes of those Acts, and that the Act confirming the Provisional Order repealed sec. 6 of the 41 & 42 Vict., c. 32, so far as it related to that land. On a case stated for the opinion of

the High Court, the decision of the magistrate was upheld. It was held that on the construction of the Elementary Education Act, 1870, and the Act confirming the Provisional Order, the school board had the power to purchase the whole of the site and to apply any part of the land to an authorised school purpose, provided that they did so in good faith.

Compensation for Injurious Affection.

With regard to the compensation which may be payable for injuriously affecting land other than that acquired for a school by reason of the noise made by school children on their way to and from and outside the school, *see R.* v. *Pearce, ex parte* (67 L. J. Q. B. 842; 78 L. T. 681). In that case it appeared that the London School Board had under a Provisional Order powers for the compulsory purchase, for the site of a school, of a part of certain land at Paddington of which the claimant was the owner, and which he had developed as a building estate. Upon the inquisition held by the Under Sheriff as to the claim to compensation and for damage for injuriously affecting other hereditaments by reason of the execution of the works, the claimant proposed to give evidence that the houses erected and to be erected upon the land adjoining the portion taken by the school board would be injuriously affected and would deteriorate in value by reason of the noise occasioned by children outside the building of the board school. For the school board it was objected that no evidence could be given under this head, and that a deterioration in value alleged to be caused by the noise made by school children in the roadway on their way to and from and outside the board school building was not a subject for compensation. The jury by their verdict assessed the compensation for the purchase and value of the land at £2,690, and by agreement separately assessed the compensation under the head of injuriously affecting other hereditaments of the claimant at £1000. A rule *nisi* for a *certiorari* was obtained by the school board for bringing up and quashing the inquisition verdict and judgment so far as it related to the sum of £1000. The Court (Day and Lawrence, JJ.) discharged the rule. Mr. Justice Day said: The question whether really substantial damage be or be not occasioned by the existence of the school is one for the jury. In accordance with the principles of the law laid down in many cases and with what has been the constant practice for many years in cases of this description the question was left to the jury to say whether in their opinion the presence of a school carried on according to the usual plan in which schools must necessarily be carried on in the Metropolis is calculated to injure other lands of the claimants in the vicinity of the particular plot of land taken for the building. There seems to be no ground for disturbing their finding in this case or for saying that the jury were not entitled to find as they have found that the adjoining land of the plaintiff will be injured by the erection of the school on land which is taken compulsorily.

Effect on Rights of Way.

As to the right of way over other lands of the vendor when the contract for the sale to a school board of certain lands with all that was appurtenant or appendant to them, contained no reference to an alleged right of way, see *Bolton* v. *Bolton* (L. R. 11 Ch. D. 968; 48 L. J. Ch. 467; 40 L. T., N. S., 582).

Miscellaneous.

A school board are precluded by the Disused Burial Ground Acts from erecting a school on a part of a cemetery which has been closed for interments, although interments may not have taken place in

that part. *Ponsford* v. *Newport School Board* ([1894] C. A., 1 Ch. 454; 63 L. J. Ch. 278; 42 W. R. 258; 70 L. T. 502).

Where land was acquired compulsorily by the London School Board for a purpose that was *ultra vires*, the Court of Appeal held that the Board were not entitled to treat the land as superfluous, that they were bound by the covenants in the lease, and that they were liable in damages for the breach of the covenants. *Batson* v. *London School Board* (1903), 2 L.G.R. 116.

Where land is acquired under the Lands Clauses Consolidation Act, 1845, by a Local Education Authority for the purposes of the Education Acts, that authority is liable, under sec. 133, to make good any deficiency in the assessment for the poor-rate by reason of such lands having been taken or used for those purposes, until their works are completed and assessed to the poor-rate. In London the general rate and the poor-rate are assessed and levied together, as one rate, termed the general rate, which is assessed, made, collected and levied as if it were the poor rate. It has been held that the London School Board was not liable to made good the whole of the deficiency in the general rate, but only that part of it which represented the poor rate or anything chargeable on the poor rate. *Islington Corporation* v. *London School Board* (1902), 2 K.B. 701; 71 L. J. K.B. 852; 87 L. T. 177; 67 J. P. 18.

Compulsory Purchase of Land in London.

See sec. 2 (2) of the Education (London) Act, 1903, on p. 232.

Compulsory Purchase of Land Exempt from Purchase for Housing :—Provisional Orders.

Sec. 45 of the Housing Town Planning, &c., Act, 1909, provides that nothing in the Housing Act, 1890, and any amending Acts, is to authorise the acquisition for the purposes of those Acts of any land which is the site of an ancient monument or other object of archæological interest. If an order for purchasing any such land for the purposes of the Education Acts is made and confirmed by the Board of Education, the confirming order will be provisional only and will require confirmation by Parliament.

The probability that there will be many such orders seems to be remote, and therefore it has not been thought necessary to include in this volume notes setting out the practice relating to Provisional Orders which have formed part of previous editions of the work. In cases which arise, proceedings for the confirmation of the provisional order will be carried out by the Board of Education, and all necessary instructions will be given by that Department to any Local Education Authorities that require them.

Power to provide Elementary Schools outside Area.

35. A Local Education Authority may, with the consent of the Board of Education, who shall consult the authority of the area in which the proposed site is situated, provide a public elementary school, in cases where it appears convenient to do so, on a site outside their area for the use of children within their area, and for the purposes of the Education Acts a school so provided shall be deemed to be situated within the area of the authority.

Note 35.—This section came into operation on the 8th August, 1918.

The obligation of a Local Education Authority under sec. 7 (1) of the Education Act, 1902, only extends to the maintenance and keeping efficient of public elementary schools within their area. It did not extend to schools outside their area. The advantage of building a school to serve for a populous urban district outside the urban boundary, where there is more open space available, is apparent, and this section enables it to be done. The provision that a school so provided shall be deemed to be situated within the area of the authority, brings the school within the scope of sec. 7 of the Act of 1902 and imposes on the education authority the duty of maintaining the school, whilst it removes the objections to expenditure for maintenance which, without such a provision, the district auditor would be bound to take.

The Board of Education must consult the authority of the area in which the proposed site is situate; but the latter has no power to prevent the consent from being given. It is open to them, however, to make representations to the contrary to the Board of Education if they think fit to do so. See the last note to sec. 20 on p. 201.

Amendments with Respect to the Allocation of Expenses to Particular Areas.

36.—(1.) It shall not be obligatory on a county council to charge on or raise within particular areas any portion of such expenses as are mentioned in paragraph (*c*) or paragraph (*d*) of sub-section (1) of section eighteen of the Education Act, 1902, and accordingly each of those paragraphs shall have effect as if for the word "shall" there was substituted the word "may" and as if the words "less than one half or" were omitted therefrom; and, where before the passing of this Act any portion of such expenses has been charged on or allocated to any area, the county council may cancel or vary the charge or allocation.

(2.) Before charging any expenses under section eighteen (1) (*a*) of the Education Act, 1902, on any area situate within a borough or urban district the council of which is an authority for the purposes of Part III. of the Education Act, 1902, a county council shall consult the council of the borough or urban district concerned.

Note 36.—This section came into operation on the 8th August, 1918.

Under para. (*c*) and (*d*) of sec. 18 of the Act of 1902, county councils were required to charge on the parish or parishes directly benefited not less than one-half or more than three-fourths of certain capital expenditure and certain expenses incurred by them to meet liabilities on account of loans or rent. This was found to weigh heavily sometimes on the parish or parishes concerned; and the prospect of having the charges imposed upon them induced some parishes to object to the expenditure being incurred. Thus they tried to persuade County Councils to abstain from providing them with school buildings which in fact they ought to have.

The object of the amendment in sub-sec. (1) of the above section is to remove the statutory requirement by which not less than one-half had to be charged on the benefiting area and to leave it entirely to the authority whether they should charge the area up to three

fourths or whether they should place the whole amount on the county fund.

Under sec. 18 (1) (*a*) the authority for higher education may charge expenses of higher education on any parish or parishes which in the opinion of the authority are served by the school or college in connection with which those higher education expenses have been incurred. When the parish or parishes are within the area of another authority which is the authority for elementary education, the amendment in sub-sec. (2) of the above section requires that the elementary education authority shall be consulted by the higher education authority before the expenses referred to are charged on that parish or those parishes. This will not enable the elementary education authority to refuse to have the expenses so charged but they will be entitled to have their views heard before the charge is imposed.

Provisions as to Expenses of Provisional Orders, &c.

37. Any expenses incurred by a council in connection with any Provisional Order for the purposes of the Education Acts, or any Order under this Act for the purpose of the acquisition of land, shall be defrayed as expenses of the council under the Education Act, 1902, and the council shall have the same power of borrowing for the purpose of those expenses as they have under section nineteen of the Education Act, 1902, for the purpose of the expenses therein mentioned.

Note 37.—This section came into operation on the 8th August, 1918.

Prior to the passing of this Act the exercise of certain of the powers of the Board of Education had to be confirmed by submitting a Provisional Order to Parliament. The present Act has repealed most of the provisions under which Provisional Orders were required, but such orders are still necessary in the cases mentioned in sec. 34 (1) (*c*). Para. 12 of the Third Schedule to the Education Act, 1902, enables the Ministry of Health to modify by Provisional Order the education provisions of local Acts in order to bring them into conformity with the Act of 1902. It was doubtful to what fund the expenses of Provisional Orders should be charged, and whether a Local Education Authority could borrow in order to pay such expenses. Sec. 37 now makes it clear that the expenses incurred in connection with Provisional Orders as well as orders made under sec. 34 of the Education Act, 1918, are to be defrayed as provided in sec. 18 of the Education Act, 1902, and that under sec. 19 of the Education Act, 1902, money may be borrowed to pay such expenses.

Expenses of Education Meetings, Conferences, &c.

38. Any council having powers under the Education Acts may, subject to regulations made by the Board of Education, defray as part of their expenses under those Acts any reasonable expenses incurred by them in paying subscriptions towards the cost of, or otherwise in connection with, meetings or conferences held for the purpose of discussing the promotion and organisation of education or educational administration, and the attendance of persons nominated by the council at any such meeting or conference: Provided that—

(*a*) the expenses of more than three persons in connection with any meeting or conference shall not be paid except with the previous sanction of the Board of Education ;

(*b*) payments for travelling expenses and subsistence shall be in accordance with the scale adopted by the council ;

(*c*) expenses shall not be paid in respect of any meeting or conference outside the United Kingdom unless the Board of Education have sanctioned the attendance of persons nominated by the council at the meeting or the conference ;

(*d*) no expenses for any purpose shall be paid under this section without the approval of the Board of Education, unless expenditure for the purpose has been specially authorised or ratified by resolution of the council, after special notice has been given to members of the council of the proposal to authorise or ratify the expenditure, or, where a council has delegated its powers under this section to the education committee by resolution of that committee after a like notice has been given to the members thereof.

Note 38.—This section came into operation on the 2nd December, 1918.

Prior to the passing of the Act of 1918, the School Board Conference Act, 1897, was the only authority under which Local Education Authorities defrayed the expenses of their members and officers in attending conferences relating to elementary education. But the language of that Act was not appropriate to the new local authorities substituted for school boards by the Education Act, 1902. There was no authority for expenditure in regard to conferences relating to higher education except the very doubtful authority of sec. 2 of the Act, of 1902. Sec. 38 gives the necessary authority in regard to both classes of education. On the 4th December, 1918, the Board of Education made the following regulations with reference to the expenses of education meetings, conferences, &c.

(1.) A council having powers under the Education Acts may subject as herein provided make reasonable payments for actual travelling expenses and subsistence in accordance with the scale adopted by the council concerned to persons nominated by the council to attend a meeting or conference held for the purpose of discussing the promotion and organisation of education or educational administration.

(2.) The expenses defrayed by a council under the said section and incurred by them in paying subscriptions towards the cost of or otherwise in connection with any one meeting or conference (exclusive of expenses incurred in connection with the attendance of persons nominated by the council at the meeting or conference) shall not exceed, except with the sanction of the Board of Education—

(*a*) the sum of two guineas ; or

(*b*) a sum calculated according to the population of the area in respect of which the council has powers under the Education Acts as ascertained by the last preceding census at the rate of two shillings per thousand of that population ;

whichever of these sums is the greater.

(3.) A council having powers under the Education Acts may pay as a yearly subscription to any association or body which holds or organises meetings or conferences for the purpose of discussing the promotion and organisation of education or educational administration a sum not exceeding ten guineas if the population of the area of the council as ascertained by the last preceding census exceeds twenty thousand and a sum not exceeding five guineas if the population as so ascertained does not exceed twenty thousand.

Power to pay Expenses of Prosecution for Cruelty.

39. The powers of a Local Education Authority for the purposes of Part III. of the Education Act, 1902, shall include a power to prosecute any person under section twelve of the Children Act, 1908, where the person against whom the offence was committed was a child within the meaning of this Act, and to pay any expenses incidental to the prosecution.

Note 39.—This section came into operation on the 8th August, 1918.

The expression "child" in the Act of 1918 is defined in sec. 48 (p. 426): It means any child up to the age when his parents cease to be under an obligation to cause him to receive efficient elementary instruction or to attend school under the enactments relating to elementary education and the bye-laws made thereunder.

Apart from this provision in the Act of 1918, the word "child" in the Children Act, 1908, sec. 12, means a person under the age of fourteen years (sec. 131). The power of a Local Education Authority to prosecute under sec. 39 of the Act of 1918, therefore extends to children who may be over fourteen years of age, as, under sec. 8 (2) of the Act, fifteen years is the maximum age up to which bye-laws relating to school attendance may require parents to cause their children to attend school; and, by sec. 9 (1) of the Act of 1918, where a child who is attending or is about to attend a public elementary school or a school certified by the Board of Education under the Elementary Education (Blind and Deaf Children) Act, 1893, or the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914, attains any year of age during the school term, the child shall not, for the purpose of any enactment or bye-law relating to school attendance be deemed to have attained that year of age until the end of the term.

A Local Education Authority's power to prosecute under sec. 39 of the Act of 1918, may therefore extend to children attending school, up to the end of the school term in which they become fifteen years old. As to proving the child's age, see sec. 123 of the Children Act, 1908.

Sec. 12 in Part II. of the Children Act, 1908, provides as follows:—

Punishment for Cruelty to Children and Young Persons.

12.—(1.) If any person over the age of sixteen years, who has the custody, charge, or care of any child or young person, wilfully assaults, illtreats, neglects, abandons, or exposes such child or young person, or causes or procures such child or young person to be assaulted, illtreated, neglected, abandoned, or exposed, in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanor, and shall be liable—

(*a*) on conviction on indictment, to a fine not excceeding one hundred pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding two years; and

(*b*) on summary conviction, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding six months;

and for the purposes of this section a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing, medical aid, or lodging for the child or young person, or if, being unable otherwise to provide such food, clothing, medical aid, or lodging, he fails to take steps to procure the same to be provided under the Acts relating to the relief of the poor.

(2.) A person may be convicted of an offence under this section, either on indictment or by a court of summary jurisdiction, notwithstanding that actual suffering or injury to health, or the likelihood of such suffering or injury to health, was obviated by the action of a another person.

(3.) A person may be convicted of an offence under this section, either on indictment or by a court of summary jurdisiction, notwithstanding the death of the child or young person in respect of whom the offence is committed.

(4.) Upon the trial of any person over the age of sixteen indicted for the manslaughter of a child or young person of whom he had the custody charge or care, it shall be lawful for the jury, if they are satisfied that the accused is guilty of an offence under this section in respect of such child or young person, to find the accused guilty of such offence.

(5.) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruable or payable in the event of the death of the child or young person, and had knowledge that such sum of money was accruing or becoming payable, then—

(*a*) in the case of a conviction on indictment, the court may in its discretion either increase the amount of the fine under this section so that the fine does not exceed two hundred pounds; or, in lieu of awarding any other penalty under this section sentence the person to penal servitude for any term not exceeding five years; and

(*b*) in the case of a summary conviction, the court in determining the sentence to be awarded shall take into consideration the fact that the person was so interested and had such knowledge.

(6.) A person shall be deemed to be directly or indirectly interested in a sum of money under this section, if he has any share in or any benefit from the payment of that money, though he is not a person to whom it is legally payable.

(7.) A copy of a policy of insurance, certified by an officer or agent of the insurance company granting the policy, to be a true copy, shall in any proceedings under this section be primâ facie evidence that the child or young person therein stated to be insured has been in fact so insured, and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(8.) An offence under this section is in this Part of this Act referred to as an offence of cruelty.

The following cases have been decided under sec. 12 of the Children Act, 1908 :—

Sub sec. 1.—A child was suffering in her health through adenoids, for which the only remedy was a surgical operation, which would not be a dangerous one. This operation the respondent refused to allow. The Court held that the Justices might, on these facts, find that the respondent had failed to provide adequate medical relief for his child. *Oakey* v. *Jackson* (1914), 1 K.B. 216 ; 12 L.G.R. 248.

The putative father of a child, who is cohabiting with the child's mother, but against whom no affiliation order has been made, may have the custody, charge, or care of the child within the meaning of that section, although the mother is the child's parent and sole legal custodian or guardian, and although the father may not be one of the persons enumerated in sec. 38 (2) of the Children Act as being presumed to have the custody, charge, or care of the child. *Liverpool Society for Prevention of Cruelty to Children* v. *Jones* (1914), 3 K.B. 813 ; 12 L.G.R. 1103.

A husband who is separated from his wife by agreement and who remits to her sufficient money for the support of their children, is nevertheless criminally liable for neglect of the children, if, to his knowledge, she neglects them. *Poole* v. *Stokes* (1914), 110 L. T. 1020 ; 12 L.G.R. 629.

Sub-sec. (5). By sec. 7 of the Children Act, 1908, it is an offence for a person to insure the life of an infant which she has undertaken to nurse for reward. It was held by the Scottish Court that the payment of premiums upon a policy of insurance effected prior to the date when the Children Act came into operation (1st April, 1909) was not an offence under the Act. *Glasgow Parish Council* v. *Martin* (1910), S. C. (J.) 102.

Proceedings taken by Local Education Authorities.

In his annual report for 1917, p. 187, the Chief Medical Officer of the Board of Education refers to several cases in which police court proceedings have been successfully taken by Local Education Authorities against parents who have persistently neglected their children. Convictions have been obtained for failure to provide children with spectacles ; failure to provide dental treatment ; neglect to obtain proper treatment for children suffering from scabies ; for causing a child to work in a rag warehouse, when it was undergoing treatment at a Tuberculosis dispensary ; for neglect to obtain treatment for discharging ears ; for neglect to obtain treatment for marked deformities ; for persistent neglect of verminous conditions.

Public Inquiries by Board of Education.

40.—(1.) The Board of Education may hold a public inquiry for the purpose of the exercise of any of their powers or the performance of any of their duties under the Education Acts.

(2.) The following provisions shall (except as otherwise provided by the Education Acts) apply to any public inquiry held by the Board of Education :—

(*a*) The Board shall appoint a person or persons to hold the inquiry :

(*b*) The person or persons so appointed shall hold a sitting or sittings in some convenient place in the neighbour-

hood to which the subject of the inquiry relates, and thereat shall hear, receive, and examine any evidence and information offered, and hear and inquire into the objections or representations made respecting the subject matter of the inquiry, with power from time to time to adjourn any sitting :

(*c*) Notice shall be published in such manner as the Board direct of every such sitting, except an adjourned sitting, seven days at least before the holding thereof :

(*d*) The person or persons so appointed shall make a report in writing to the Board setting forth the result of the inquiry and the objections and representations, if any, made thereat, and any opinion or recommendations submitted by him or them to the Board :

(*e*) The Board shall furnish a copy of the report to any local education authority concerned with the subject matter of the inquiry, and, on payment of such fee as may be fixed by the Board, to any person interested :

(*f*) The Board may, where it appears to them reasonable that such an order should be made, order the payment of the whole or any part of the costs of the inquiry either by any Local Education Authority to whose administration the inquiry appears to the Board to be incidental, or by the applicant for the inquiry, and may require the applicant for an inquiry to give security for the costs thereof :

(*g*) Any order so made shall certify the amount to be paid by the Local Education Authority or the applicant, and any amount so certified shall, without prejudice to the recovery thereof as a debt due to the Crown, be recoverable by the Board summarily as a civil debt from the authority or the applicant as the case may be.

Note 40.—The whole of this section came into force on the 8th August, 1918, except so far as related to any inquiry pending at that date.

Prior to the passing of this Act public inquiries by the Board of Education were held under sec. 73 of the Education Act, 1870, and sec. 23 (10) of the Education Act, 1902. Both of these enactments are repealed by the present Act and sec. 40 takes their place. This section sets out the procedure applicable to every kind of inquiry under the Education Acts which the Board of Education are authorised to hold, though the special inquiry under sec. 13 of the Education Act, 1902, in regard to the application of the income of endowments, may still be held.

As to the notices to be published, compare the provisions in sec. 20 of the Education Act, 1873, on p. 76.

The report of the inspector is to be made to the Board of Education, who will supply a copy to any Local Education Authority concerned

with the subject matter of the inquiry; and also, on request, and on payment of the fee fixed by the Board, the Board will furnish a copy to any person interested, that is to anyone who can shew that he has any kind of interest in the matter. (Parl. Debates, vol. 107 col. 1647.)

The section empowers the Board of Education to order the costs of the inquiry to be paid by the Local Education Authority concerned, or by the applicant; and they may order the applicant to give security for costs before the inquiry is held. But the Parliamentary Secretary of the Board of Education (Mr. Herbert Lewis, M.P.), stated in Committee of the House of Commons that there was no intention of pressing the matter of costs hardly or unreasonably against any individual who, having reasons, desires to have an inquiry. The power is intended to be kept in reserve for the purpose of saddling the costs of the inquiry upon a person, who, on merely frivolous grounds, seeks to have an inquiry. (Parl. Debates, vol. 107, col. 1649.)

Sub-sec. (*e*).—As to " persons interested," cf. *Margenson* v. *Tildsley*, 1 L.G.R. 333.

Inspection of Minutes.

41. The minutes of the proceedings of a Local Education Authority and, where a Local Education Authority delegate to their education committee any powers and the acts and proceedings of the education committee as respects the exercise of those powers are not required to be submitted to the council for their approval, the minutes of the proceedings of the education committee relating to the exercise of those powers, shall be open to the inspection of any ratepayer at any reasonable time during the ordinary hours of business on payment of a fee of one shilling, and any ratepayer may make a copy thereof or take an extract therefrom.

Note 41.—This section came into force on the 8th August, 1918.

Without statutory authority a ratepayer cannot claim as of right to inspect the minutes of a local authority. Sec. 41 gives this statutory authority, on the conditions specified, to every ratepayer. It is a partial revival of sec. 87 of the Education Act, 1870, which was repealed by the Education Act, 1902.

By sec. 17 (2) of the Education Act, 1902, any council having powers under that Act (this includes every Local Education Authority) may delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers under the Act, except the power of raising a rate or borrowing money. When plenary powers have thus been delegated to the education committee, sec. 41 requires that the minutes of the proceedings of that committee relating to the exercise of those powers shall also be open to inspection.

Payments to the Central Welsh Board.

42.—(1.) For the yearly sum payable to the Central Welsh Board under the scheme regulating the intermediate and technical education fund of any county, as defined by the Welsh Intermediate Education Act, 1889, there shall be substituted—

(*a*) a yearly sum equal to a percentage not exceeding twenty-two and a half per cent. fixed from time to

time at a uniform rate for every county by the Central Welsh Board of the sum produced by a rate of one halfpenny in the pound for the preceeding year, calculated in the manner provided by subsection (3) of section eight of the Welsh Intermediate Education Act, 1889; and

(*b*) a yearly sum equal to five per cent. of the net income for the preceding year of any endowment comprised in the intermediate and technical education fund of the county, or, in the alternative, for each year during such period as may be agreed with the Central Welsh Board, such yearly sum as that Board may agree to accept in lieu thereof.

(2.) For the purpose of ascertaining the said net income there shall be deducted from the gross income all proper expenses and outgoings in respect of administration and management of the endowment (including charges for interest on and repayment of loans and replacement of capital), and any sums required by the scheme to be treated as capital, and the term "endowment" shall include augmentations acquired by the investment of surplus income whether derived from endowment or county rate, or from any other source, but not property occupied for the purposes of the scheme.

(3.) The power of charging capitation fees for scholars offered for examination conferred on the Central Welsh Board by the scheme of the thirteenth day of May, eighteen hundred and ninety-six, regulating the Central Welsh Intermediate Education Fund shall cease.

(4.) The provisions of this section shall have effect and be construed as part of the schemes regulating the Central Welsh Intermediate Education Fund and the intermediate and technical education funds of counties in Wales and Monmouthshire, and may be repealed or altered by future schemes accordingly.

Note 42.—This section came into operation on the 1st April, 1919.

The purpose of the Welsh Intermediate Education Act, 1889, is to make further provision for the intermediate and technical education of the inhabitants of Wales and the county of Monmouth. So far as is consistent with the tenour thereof, it is to be construed as one with the Endowed Schools Acts.

The subject matter of those Acts is not dealt with in the present volume, which, therefore, does not contain the Welsh Intermediate Education Act, 1889.

Evidence of Certificates, &c., issued by Local Education Authorities.

43. All orders, certificates, notices, requirements, and documents of a Local Education Authority under the Educa-

tion Acts, if purporting to be signed by the clerk of the authority or of the education committee, or by the director of, or secretary for, education, shall until the contrary is proved be deemed to be made by the authority and to have been so signed, and may be proved by the production of a copy thereof purporting to have been so signed.

Note 43.—This section came into force on the 8th August, 1918. It extends the facilities given in sec. 81 of the Education Act, 1870, as extended by sec. 50 of the Education Act, 1918 (p. 436). See also secs. 82 and 83 of the former Act and the note to sec. 83. Sec. 43 of this Act gives to Local Education Authorities, for proving in a court of law the documents issued by those authorities, similar facilities to those which the Board of Education have under sec. 83 of the Act of 1870. It will not ordinarily be necessary to produce the original documents, as copies will be sufficient if they purport to be signed by the clerk of the Local Education Authority or of the education committee. If they have to be proved in court it will not be necessary for the person who signed them to be present in court to prove them.

Education Grants.

44.—(1.) The Board of Education shall, subject to the provisions of this Act, by regulations provide for the payment to Local Education Authorities out of moneys provided by Parliament of annual substantive grants in aid of education of such amount and subject to such conditions and limitations as may be prescribed in the regulations, and nothing in any Act of Parliament shall prevent the Board of Education from paying grants to an authority in respect of any expenditure which the authority may lawfully incur.

(2.) Subject to the regulations made under the next succeeding sub-section, the total sums paid to a Local Education Authority out of moneys provided by Parliament and the local taxation account in aid of elementary education or education other than elementary, as the case may be, shall not be less than one half of the net expenditure of the authority recognised by the Board of Education as expenditure in aid of which parliamentary grants should be made to the authority, and, if the total sums payable out of those moneys to an authority in any year fall short of one half of that expenditure, there shall be paid by the Board of Education to that authority, out of moneys provided by Parliament, a deficiency grant equal to the amount of the deficiency, provided that a deficiency grant shall not be so paid as to make good to the authority any deductions made from a substantive grant.

(3.) The Board of Education may make regulations for the purpose of determining how the amount of any deficiency grant payable under this section shall be ascertained and paid, and those regulations shall, if the Treasury so direct, provide for the exclusion in the ascertainment of that amount

of all or any sums paid by any Government department other than the Board of Education and of all or any expenditure which in the opinion of the Board of Education is attributable to a service in respect of which payments are made by a Government department other than the Board of Education.

(4.) The fee grant under the Elementary Education Act, 1891, as amended by the Elementary Education (Fee Grant) Act, 1916, the aid grant under section ten of the Education Act, 1902, and the small population grant under section nineteen of the Elementary Education Act, 1876, as amended by the Education Code (1890) Act, 1890, and the Education (Small Population Grants) Act, 1915, shall cease on the appointed day.

(5.) If, by reason of the failure of an authority to perform its duties under the Education Acts or to comply with the conditions on which grants are made, the deficiency grant is reduced or a deduction is made from any substantive grant exceeding five hundred pounds or the amount which would be produced by a rate of a halfpenny in the pound whichever is the less, the Board of Education shall cause to be laid before Parliament a report stating the amount of and the reasons for the reduction or deduction.

(6.) Any regulations made by the Board of Education for the payment of grants shall be laid before Parliament as soon as may be after they are made.

Note 44.—Sub-secs. (1), (2), (3) and (5) and sub-sec. (4), except so far as it relates to the small population grant, came into operation on the 1st April, 1919. Sub-sec. (4) so far as it relates to the small population grant came into operation on the 1st October, 1918. Sub-sec. (6) came into operation on the 1st November, 1918. On the subject of Parliamentary Grants generally, see secs. 96 and 97, Education Act, 1870, p. 70, and sec. 20, Education Act, 1876, p. 95.

As to the annual estimates of expenditure to be supplied by L.E.As. to the Board of Education for the purposes of sec. 44, see the circular of 10th September, 1919, on p. 655.

Grant Regulations.

The following is a Summary of the Principal Provisions of the Grant Regulations:

If a question arises under the regulations relating to the inclusion or exclusion of any item of expenditure for the purpose of calculating a grant, the decision ordinarily rests with the Board of Education and the Board's decision is final.

In calculating a grant it is usual for the calculation to be made to the nearest pound, a fraction of a pound in the final result being ignored, or reckoned as a pound, according as it is, or is not, less than ten shillings.

General Condition.

The grant to a Local Education Authority is usually conditional upon the Board being satisfied that the authority has performed its duties under the Education Acts; has complied with the conditions of the

regulations of the Board for public elementary schools, special schools and other special services; and has supplied punctually such information and returns as the Board require.

If the Board are not satisfied on any of these matters they may withhold or make a deduction from the grant. (Article 7 (Grant No. 1).)

THE EDUCATION ACT, 1918, GRANT REGULATIONS No. 1, issued by the Board of Education on 26th April, 1919 (Statutory Rules and Orders, 1919, No. 554. Price 1d.), provide in Article 1 that the substantive grant payable by the Board to Local Education Authorities in respect of elementary education will, as from the 1st April, 1919, consist of one consolidated grant, payable for each year beginning on the 1st April, subject to the conditions of the Regulations.

Public Elementary Schools maintained by the Authority.

The grant payable for a year will be based upon the average attendance, the produce of a rate, and the expenditure of that year, reckoned as follows,—

(*a*) 36 shillings for each unit of average attendance in public elementary schools maintained by the authority (not including special services) plus

(*b*) $\frac{3}{5}$ths of the authority's expenditure on the salaries of teachers in those schools;

(*c*) $\frac{1}{2}$ of the net expenditure on special services;* and

(*d*) $\frac{1}{5}$th of the remaining net expenditure on elementary education; less the produce of a 7d. rate upon assessable value in the area.

5.—*Minimum limit:* The grant shall not be less than one half of the net expenditure, and if the grant calculated under the formula would fall short of this minimum limit, it shall be increased accordingly.

6.—*Increased grant in highly-rated areas:* (i.) In those areas in which the grant calculated as above would, when added to the grant under the Agricultural Rates Act, fall short of the net expenditure by a sum exceeding the equivalent of a rate of the *prescribed amount*, the grant shall be increased by the *prescribed proportion* of the amount of such excess.

(ii.) The "prescribed amount" and the "prescribed proportion" for the purposes of this article are subject to periodical revision. [For the year 1920-21 the prescribed amount is ~~twenty~~ forty eight pence and the prescribed proportion is one-half.]

(iii.) The increased grant under this article will not be made in respect of any expenditure in excess of that which is contained in the estimates passed by the authority and adopted by it as the basis on which the education rate is levied in the area from the beginning of the year.

(iv.) In considering any claim under this article the Board will have regard to—

(*a*) The standard of expenditure in other areas not receiving increased grant under this article;

(*b*) The special circumstances of the area;

and, if they are not satisfied that due economy has been observed in the area, may limit the amount of the expenditure in respect of which they will pay grant.

(v.) In order to receive increased grant under this article the authority must, at the time when it forwards its estimates to the Board, furnish full explanations for the purpose of satisfying the

* Special services consist of the following: (*a*) School medical service, including medical inspection and medical treatment of children attending public elementary schools; (*b*) Provision of meals; (*c*) Schools for blind, deaf, defective and epileptic children; (*d*) Organisation and supervision of physical training in public elementary schools; (*e*) Evening play centres; and (*f*) Nursery schools.

Board on these points; and provisional inclusion by the Board of expenditure for the purpose of determining the instalments payable in the year is not to be regarded by the authority as committing the Board to the final appoval of it for the purpose of this article.

8.—*Proviso to Articles 5 and 6*: The grant shall not be increased under Article 5 or Article 6 so as to make good to the authority any sum withheld or deducted from the grant under Article 7.

The grant is payable by twelve monthly instalments and provision is made for a final adjustment after the receipts, &c., for the year have been audited.

Grant Regulations No. 2, dated 26th April, 1919 (Statutory Rules and Orders, 1919, No. 555, Price 1d.), provide for the payment of deficiency grants, a deficiency being the amount, if any, by which in the financial year beginning on the 1st April the total sums payable to a Local Education Authority by the Board of Education out of moneys provided by Parliament fall short of half of the authority's net expenditure as defined in Grant Regulations No. 1, the sums specified in sub-sec. (3) of sec. 44 being duly omitted.

Public Elementary Schools not maintained by the Authority.

Grant Regulations No. 3, dated 13th June, 1919 (S.R.O., 1919, No. 779, Price 1d.), provide for the payment of a substantive grant for elementary education to public elementary schools not maintained by the Local Education Authority. The grant for any year based on the average attendance of that year will be at the rate of 45s. for each unit of average attendance. This may be increased to 48s. 6d. in those schools in which the Board are satisfied that adequate and suitable provision has been made for practical instruction in handicraft, cookery, gardening and other subjects. The grant will be paid by four instalments, and is conditional upon the Board being satisfied that the school managers have complied with the requirements of the Education Acts and the Code of Regulations for public elementary schools, so far as applicable; and have supplied punctually such information and returns as the Board require.

Grants for Higher Education.

Grant Regulations No. 4, dated 24th January, 1920 (S.R.O., 1920, No. 61, Price 1d.), provide for the payment of deficiency grants in respect of Education other than elementary. In ascertaining the net expenditure of any Local Education Authority the Board will exclude (*a*) the Treasury Grant under the Welsh Intermediate Education Act, 1889; (*b*) all sums paid by any Government Department other than the Board of Education, except the Residue Grant (Local Taxation, Customs and Excise Act, 1890); and any expenditure which in the Board's opinion is attributable to a service in respect of which those sums are paid. The Board will exclude any expenditure not recognised by them as expenditure in aid of which parliamentary grants should be made as well as all receipts relating to excluded expenditure except receipts from rates raised by the Local Education Authority, or from grants. Having excluded these several items from the amount shown in the portion of the Local Education Authority's Statutory Financial Statement relating to Higher Education (Revenue Account) the remainder will represent the authority's "net expenditure."

A "deficiency" for the purpose of these regulations is the amount, if any, by which in the financial year begining on the 1st April the total sums payable to a Local Education Authority by the Board of Education and out of the Local Taxation Account, fall short of half of the authority's "net expenditure."

A deficiency grant, equal to the deficiency, will be payable to the Local Education Authority subject to the conditions of the regulations being satisfied. If a deduction has been made by the Board from any substantive grant on account of a failure to comply with its conditions, a deduction of that amount will be made from any deficiency grant that would otherwise be payable. The grant will be payable by instalments and the total amount will be such as to satisfy sec. 44 (2) of the Act. The grant will be conditional upon the Board being satisfied that the authority has performed its duties under the Education Acts, and has supplied punctually such information and returns as the Board require. If the Board are not satisfied on any of these matters they may withhold or make a deduction from the grant.

GRANT REGULATIONS No. 5, No. 5a and No. 5b provide for the payment of grants in respect of the higher education of certain ex-service officers and men of British nationality during the current academical year at universities and other public institutions of higher education in England and Wales.

These regulations relate to matters outside the scope of this work.

Nursery Schools.

GRANT REGULATIONS No. 6 dated 5th March, 1919. (S.R.O. 1919, No. 257, Price 1d.). They authorise the payment of grants to recognised nursery-schools not provided by a Local Education Authority. After the end of each year commencing 1st April the grant will be payable at the rate of one-half of the expenditure in that year. In determining the expenditure on which the grant is payable the Board will deduct from the gross expenditure any fees received; the amount of any contributions from an authority and any items of expenditure which in the Board's opinion should not be taken into account for the purposes of grant. Application for grant must be made to the Board through the Local Education Authority, and must be accompanied by an audited statement of accounts for the period.

The payment of grant and the continuance of recognition is subject to the fulfilment of the conditions laid down in the regulations which also set out the conditions for recognition.

In the case of nursery schools provided by the Local Education Authority grant is paid under Grant Regulations No. 1.

Special Schools and Evening Play Centres (Non-Provided.)

GRANT REGULATIONS No. 7, dated 28th March, 1919, provide for grants in respect of special schools and evening play centres not provided by Local Education Authorities in England and Wales.

The grant for blind and deaf children will be payable at the end of the year commencing 1st April, at the rate of £8 10s. and for defective and epileptic children £7 10s. for each unit of average attendance at a certified Day School, and at a certified Boarding School £16 10s. for each unit of average attendance for blind and deaf and £15 10s. for defective and epileptic children.

In the case of an open air school for children suffering from tuberculosis, debility or pre-tubercular conditions who by reason of their physical condition are likely to derive special benefit from attendance at such a school, the grant may be increased by £9 for each unit of average attendance in the case of a Residential School and by £4 for each such unit in the case of a Day School.

Grant will be payable at the Day School rate for children attending Boarding Schools as day scholars.

Average attendance will be obtained by dividing the total number of attendances in the year by the number of meetings of the school during that year, a fraction of a unit being reckoned as a unit if over

one-half, and ignored if under. No attendances are included made by a child for or on account of whom a payment is made by an authority, or a grant is payable by any Government Department, or by a child before completing two years of age or after the end of the term in which the child completes sixteen years of age.

As regards Play Centres, if in the Board's opinion an Evening Play Centre not provided by the L.E.A. is conducted (in accordance with the regulations, p. 572) efficiently and with due regard to economy the grant may be paid at a rate not exceeding one-half of the expenditure for the year and it will be payable after the end of the year. The Board will deduct from the expenditure contributions received from an authority and any items which in their opinion should not be taken into account for purposes of grant. Application for grant must be made to the Board through the Local Education Authority and must be accompanied by an audited statement of the accounts for the year.

GRANT REGULATIONS No. 8, dated 16th July, 1919 (Statutory Rules and Orders, 1919, No. 877, Price 3d. net). This is the new Code of Regulations for public elementary schools in England (excluding Wales and Monmouthshire) which may be cited as—

THE "ELEMENTARY EDUCATION PROVISIONAL CODE, 1919."

Chapter V. is as follows :

I. GRANTS TO LOCAL AUTHORITIES FOR ELEMENTARY EDUCATION.

Conditions of Grant.

26. The grant is conditional upon the Board being satisfied that the authority—

(i.) have performed their duties under the Education Acts;

(ii.) have complied with the Regulations of the Board for Public Elementary Schools, Special Schools and other Special Services;

(iii.) have supplied punctually such information and returns as the Board require.

27. Before paying the grant the Board may review the provision made for Elementary Education by the authority and will consider its adequacy and efficiency in relation not only to local needs and circumstances, but also to the development of a satisfactory national system of Elementary Education including the establishment of the teaching service on a sound basis throughout the country.

For the purposes of this article—

(1.) the Board will have regard, among other things,

(*a*) to the provision made in the area as a whole,

(i.) for maintaining an adequate and suitable staff of teachers;

(ii.) for securing the progress of the older or more intelligent scholars by means of Central Schools or otherwise;

(iii.) for practical instruction in Handicraft, Cookery, Gardening and other Subjects, and

(*b*) to the efficiency with which the law of school attendance is administered. (*See Circ.* 1143, *31st Dec.*, 1919, *p.* 660.)

28. It is a condition of the grant that the salaries paid by the authority to teachers throughout its area comply with the minimum rates prescribed by the Board.

29. If the Board are not satisfied on any of the matters mentioned in Articles 26, 27 and 28, they may withhold or make a deduction from the grant.

II. GRANTS TO PUBLIC ELEMENTARY SCHOOLS NOT MAINTAINED BY THE LOCAL EDUCATION AUTHORITY.

30. The grant payable to Public Elementary Schools not main-

tained by the Local Education Authority is a single consolidated grant. This grant is payable annually, for the year beginning on 1st April in each year. (*See Grant Regulations No.* 3.)

Conditions of Grant.

31. The grant is conditional on the Board being satisfied that—

(*a*) the school has complied with the requirements of the Education Acts and of this Code so far as applicable, and has supplied punctually such information and returns as the Board require,

(*b*) the salaries paid to teachers in the school comply with the minimum rates prescribed by the Board, and

(*c*) due provision has been made for

(i.) maintaining an adequate and suitable staff of teachers;

(ii.) securing the progress of older scholars by the organisation of courses of advanced instruction for them or otherwise;

(iii.) the teaching of practical subjects in the school.

32. If the Board are not satisfied on any of the matters mentioned in Article 31, they may withhold or make a deduction from the grant.*

GRANT REGULATIONS No. 9, issued 7th August, 1919 (Statutory Rules and Orders, 1919, No. 992, Price 3d. net). This is the new Code of Regulations for public elementary schools in England, enlarged so as to apply to public elementary schools in Wales (including Monmouthshire). Chapter V., set out above under Grant Regulations No. 8, is the same for Wales and Monmouthshire as for England.

GRANT REGULATIONS NO. 10, dated 27th August, 1919 (Statutory Rules and Orders, 1919, No. 1192, Price 2d.). This is the new Code of Regulations for Secondary Schools in England. Chapter VII. (the chapter relating to GRANTS) is as follows:—

36. In the case of schools placed on the Grant List and complying with these regulations, grants will be payable on account of pupils who have been receiving instruction in accordance with an approved curriculum as follows:—

(*a*) £2 on account of each pupil over 10 but not over 11 years of age at the beginning of the School Year, who had been for at least two years under instruction in a public elementary school immediately before entering the secondary school Pupils transferred from a school in which they were eligible for this grant will continue to be eligible for it in the school to which they are transferred.

(*b*) £7 on account of each pupil over 11 but not over 18 years of age at the beginning of the School Year.

37. For the purpose of estimating the above grants, the number of registered pupils fulfilling the conditions named on the 1st October, 1st February, and 1st June in each School Year will be taken, and one-third of the sum of these numbers will be the number on which grant is payable. In the case of the shortened School Year† provided for by Article 27, the number on which grant is payable will be one-third of the sum of the numbers on 1st February and 1st June. See p. 590.

38. Any pupils who are reported by the inspector as unfit to attend

* See sec. 44 (5), on page 414.

† The School Year will begin on 1st August and end on 31st July. In special circumstances a school applying for recognition may be recognised for a shortened initial year from 1st January to 31st July.

the classes in which they are being taught, or as having made unsatisfactory attendance (except from absence owing to certified illness or risk of infection), may be disqualified for grant.

39. A School in which compliance with one or more of the conditions set out in Articles 18 (*b*), 23 and 24 has been hitherto waived by the Board will, unless the Board expressly notify to the contrary, have this waiver continued and be regarded as eligible for grant under the foregoing articles.

40. Where the grant payable to a school under the foregoing articles is less than £350, the Board may, after considering the sum required for its efficient maintenance, and its importance towards a due provision of higher education for the area, make up the grant to £350.

41. A school which has hitherto been in receipt of grant on a lower scale owing to failure to fulfil one or more of the conditions set out in Articles 5, 18 (*b*), 20, 23 and 24 (*p.* 586) will, unless the Board expressly notify to the contrary, continue to be regarded as eligible for grant, and in such schools the sums of £2 and £4 10s. will be substituted for the sums of £2 and £7 named in Article 36. Schools receiving grant under this article are not eligible for any further grant under Article 40.

42. An instalment of grant amounting ordinarily to one-half of the grant estimated to be payable for the School Year is payable shortly after 1st April on a certificate from the governing body, and from the inspector, that the school is being satisfactorily conducted in accordance with these regulations.

No instalment of grant is payable in respect of the shortened initial year mentioned in Article 27 (*p.* 590).

43. Where a school receiving grants under these regulations organises special or experimental work approved by the Board, and involving special expense, the Board may pay a further grant, of such amount and subject to such conditions as they may think fit, towards meeting the special expense involved.

44. Where arrangements are made by the Board for a teacher on the staff of a school receiving grants under these regulations to visit another school recognised under Article 51, or under the corresponding article of the regulations in force for Wales (including Monmouthshire), for the purpose of studying method and gaining enlarged experience, the Board may pay a sum not exceeding £20, divided in such proportions as they think fit between the schools and teachers concerned, towards meeting the expenses involved.

44. A grant not exceeding £2 will be made by the Board to a school in receipt of grants under Articles 36 to 41, in respect of each pupil of the school who is entered (*a*) for an approved First Examination as one of a Form so entered, or (*b*) for an approved Second Examination. The Board reserve power to withhold or reduce this grant in the case of any particular pupil.

45. Any grant payable to a school which has closed, or has ceased to be conducted in accordance with the conditions for grants under these regulations, may be withheld wholly or in part, and in any case the payment made will not exceed the net outstanding liabilities of the school for maintenance at the end of the School Year in respect of which the grant is paid.

46. If any school on the grant List has failed to fulfil any of the conditions of grant in these regulations, the Board have power either to withhold the grant or, if they think fit, to pay it with or without deductions; and if any question arises as to the interpretation of these regulations, or as to the fulfilment of any of the conditions of grant, the decision of the Board shall be final.

Provision is made in Chapter VIII. for grants* for Advanced Courses in Secondary Schools. Paragraph 50 is as follows :—

50. A grant not exceeding £400 will be made in respect of each Course approved under the provisions of this Chapter, in addition to any other Grants payable under these Regulations. The sum of £400 may be reduced at the discretion of the Board in any school where the Board are of opinion that the full grant is not required for the efficient conduct of the approved Course.

This grant will be paid in two equal instalments, the first together with the instalment of grant payable under Article 42, and the second together with the balance of grant payable under Chapter VII. of these Regulations.

GRANT REGULATIONS No. 11

(Not yet issued : February, 1920)

Training of Health Visitors.

GRANT REGULATIONS No. 12, issued in draft dated 10th July, 1919, provide for grants for the Training of Health Visitors. They are made under sec. 44 of the Education Act, 1918, but their subject matter is outside the scope of this work.

GRANT REGULATIONS No. 13.

(Not yet issued : February, 1920).

Maintenance Allowance of Pupils in Secondary Schools.

GRANT REGULATIONS No. 14, issued 18th November, 1919 : S.R.O. No. 1664, provide for the payment of grants to Local Education Authorities in respect of their approved expenditure on Maintenance Allowances to pupils in Secondary Schools and other Places of Higher Education.

These Regulations are cited as the Higher Education (Maintenance Allowance Grant) Regulations, 1919.

1. Subject to the conditions prescribed in these regulations, the Board of Education may, as from 1st April, 1920, pay to Local Education Authorities under Part II. of the Education Act, 1902, an annual substantive grant in aid of expenditure incurred under arrangements approved by the Board on maintenance allowances to pupils in secondary schools, and other institutions of higher education, who are in need of assistance to enter upon or complete courses of education.

2. The general object of the substantive grant under these regulations is (1) to make secondary schools and other institutions of higher education generally accessible to children and young persons who are capable of profiting by prolonged education ; (2) to enable the pupils in these institutions to stay long enough to obtain full benefit from the course they undertake.

4. The allowances which will be taken into account under these regulations are those which are granted for maintenance, as distinct from the payment of tuition fees or other charges made by the schools or institutions in respect of the pupil's education. No payment by the Local Education Authority of tuition fees or of charges for the use of books, stationery, &c., which do not become the property of the pupil, and no payment in respect of maintenance allowances for

* A school in receipt of grant under Chapter VII. of these regulations may be recognised by the Board as providing an organised Course of Advanced Instruction. Any such Course must extend over two years, and must be planned to provide instruction for pupils who at its commencement have already reached the stage of general education marked by the standard of an approved First Examination. Application for recognition of Advanced Courses should be made not less than a month before the beginning of the School Year.

pupils who are required to pay such charges, may be included in the expenditure on maintenance allowances for the purpose of these regulations.

5. Grant is not payable under these regulations in aid of expenditure on maintenance allowances (*a*) to pupils or students in aid of whose maintenance grants are made by the Board under other regulations, *e.g.* those relating to "bursars" or students in training, and Local Science or Art Exhibitioners, or (*b*) maintenance allowances in respect of which grants are made by other Government Departments.

6. The grant payable for a year will be calculated at half the net expenditure of the Local Education Authority, under arrangements approved by the Board for the purpose of these regulations upon maintenance allowances as herein defined, subject to the maximum limit shown in Article 7.

7. The grant payable for a year shall not exceed a sum calculated as follows:—

3s. per unit of average attendance of scholars in public elementary schools within the area of the Local Education Authority during the year.

In a county this average attendance will include the attendance in public elementary schools of the non-County Boroughs and Urban Districts as well as in those which are maintained by the County Council under Part III. of the Education Act, 1902.

8. The grant is conditional upon the Board being satisfied that the authority—(i.) has performed its duties under the Education Acts; (ii.) has supplied punctually such information and returns, for the purpose of these regulations, as the Board require.

If the Board are not satisfied on any of these matters they may withhold or make a deduction from the grant.

9. The grant will be payable by instalments.

The instalments payable during a year will be calculated at half the net expenditure of the previous year, provided that they do not thereby exceed the maximum limit prescribed for the grant by Article 7. The instalments may, subject to the same proviso, exceed half the net expenditure of the previous year, if the Board are satisfied by estimates submitted by the authority that the expenditure of the year will exceed that of the previous year.

If the sum paid by way of instalments should prove to have been in excess of the grant due, as finally determined by the Board, such excess will be repayable to the Board.

10. Net expenditure means expenditure upon maintenance allowances as herein defined less all receipts relating thereto except receipts from rates raised by the authority or from grants.

11. *Final Adjustment.*—The grant will be finally adjusted after the audited accounts for the year and any other returns required by the Board for the purpose have been received and examined.

It will be calculated to the nearest pound, a fraction of a pound in the final result being ignored or reckoned as a pound according as it is, or is not, less than ten shillings.

Grant Regulations No. 15, S.R.O. 1919, No. 1688. These regulations relate to the training of Midwives and are outside the scope of this book.

Grant Regulations No. 16. Draft issued on the 14th January, 1920. These regulations relate to Art Examinations.

Grant Regulations No. 17. Draft issued on the 9th December, 1919. These Regulations relate to the provision of Scholarships, Exhibitions, &c., in Science for the year 1920.

EDUCATIONAL TRUSTS.

Power to constitute Official Trustees of Educational Trust Property.

45.—(1.) His Majesty may by Order in Council constitute and incorporate with power to hold land without licence in mortmain one or more official trustees of educational trust property, and may apply to the trustee or trustees so constituted the provisions of the Charitable Trusts Acts, 1853 to 1914, relating to the official trustee of charity lands and the official trustees of charitable funds so far as they relate to endowments which are held for or ought to be applied to educational purposes.

(2.) On the constitution of an official trustee or official trustees of educational trust property,—

(*a*) all land or estates or interests in land then vested in the official trustee of charity lands which are held by him as endowments for solely educational purposes, and

(*b*) all securities then vested in the official trustees of charitable funds which those trustees certify to be held by them as endowments for solely educational purposes,

shall by virtue of this Act vest in the official trustee or trustees of educational trust property upon the trusts and for the purposes for which they were held by the official trustee of charity lands and the official trustees of charitable funds, and, on such a certificate by the official trustees of charitable funds as aforesaid being sent to the person having charge of the books or registers in which any such securities are inscribed or registered, that person shall make such entries in the books or registers as may be necessary to give effect to this section.

(3.) If any question arises as to whether an endowment or any part of an endowment is held for or ought to be applied to solely educational purposes, the question shall be determined by the Charity Commissioners.

Note 45.—This section came into force on the 8th August, 1918.

When the Order in Council, has constituted an official trustee under sec. 45, to him, under the direction of the Board of Education will pass the educational trust property mentioned in sub-sec. (2) of this section. In the case of land, nothing further will remain to be done. The property will vest in the new trustee by virtue of this Act. In the case of securities—stocks, shares, &c.—the registrar of the security will register the transfer or enter (or inscribe) the same in the appropriate books in order to make the transaction complete (cf. *Oldham Corporation* v. *Bank of England* (1904), 2 Ch. 716 ; 2 L.G.R. 1324). The Order in Council had not been issued at the date of going to press (February, 1920).

Under the Charitable Trusts Acts an official trustee of charity lands held, as bare trustee, the legal estate of such charity lands as might be vested in him by the Charity Commissioners. Official trustees under those Acts also held stocks, shares, &c., on behalf of charities. The official trustees do not interfere in the administration of the charities, they merely hold as permanent trustees and thus save the trouble and expense attending the transfer of land, stocks, shares &c., when the same are held by ordinary trustees and one of them dies and a new trustee has to be appointed. The official trustees of Charity lands and funds have hitherto held educational lands and funds under the direction of the Charity Commissioners.

Exemption of Assurance of Property for Educational Purposes from certain restrictions under the Mortmain Acts. 51 & 52 *Vict. c.* 42; 54 & 55 *Vict. c.* 73.

46.—(1.) Any assurance, as defined by section ten of the Mortmain and Charitable Uses Act, 1888, of land or personal estate to be laid out in the purchase of land for educational purposes, whether made before or after the passing of this Act, shall be exempt from any restrictions of the law relating to Mortmain and Charitable Uses, and the Mortmain and Charitable Uses Acts, 1888 and 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892, shall not apply with respect to any such assurance.

(2.) Sub-section (1) of section ten of the Technical and Industrial Institutions Act, 1892, so far as it relates to the enrolment in the books of the Charity Commissioners of every conveyance or assurance of land for the purposes of institutions established under that Act, is hereby repealed.

(3.) Every assurance of land or personal estate to be laid out in the purchase of land for educational purposes, including every assurance of land to any local authority for any educational purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land, shall be sent to the offices of the Board of Education in London for the purpose of being recorded in the books of the Board as soon as may be after the execution of the deed or other instrument of assurance, or in the case of a will after the death of the testator.

Note 46.—This section came into force on the 8th August, 1918.

Sub-sec. (1.)—"Assurance" as defined by sec. 10 of the Mortmain and Charitable Uses Act, 1888, includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, devise, will, or other instrument.

The Mortmain and Charitable Uses Act, 1888, exempted from the provisions of that Act any assurance by deed of land of any quantity and any assurance by will of land not exceeding one acre for any one schoolhouse for the purposes only of a schoolhouse for an elementary school, or an assurance by will of personal estate to be applied in or towards the purchase of land for the same purpose only. This was subject to the proviso "that a will containing such an assurance, and

a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, shall be executed not less than twelve months before the death of the assuror, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assuror, and is enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in case of a deed the execution of the deed."

The Mortmain and Charitable Uses Act, 1891, by sec. 5 provided that land might be assured by will to or for the benefit of any charity, but subject to certain exceptions such land must notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as might be determined by the High Court or any judge thereof sitting at chambers or by the Charity Commissioners.

The Mortmain and Charitable Uses Act Amendment Act, 1892, enacted that with the exception relating to an assurance by deed in the proviso mentioned above, the exempting provision in the Mortmain, &c., Act, 1888, should apply to any assurance, by deed, of land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land. But a grant of land otherwise than for full and valuable consideration still remained subject to the Mortmain Acts.

It is now provided by sec. 46, above, that any assurance of land or personal estate to be laid out in the purchase of land for educational purposes, whether made before or after the passing of the Education Act, 1918, shall be exempt from the restrictions of the Mortmain, &c., Acts.

(2). Sec. 10 (1) of the Technical and Industrial Institutions Act, 1892, provided as follows:—" Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to conveyances or to assurances by will made under or for the purposes of this Act, but every such conveyance or assurance shall be enrolled as soon as may be in the books of the Charity Commissioners."

The last sentence of sec. 10 (1) is now repealed by sec. 46 of the present Act.

(3). It is to be noted that every assurance of land for educational purposes must be sent to the Board of Education, as provided in sec. 46 (3), in order to be recorded in the books of the Board. Subject to this an assurance of land for educational purposes may now be made as freely as an assurance of land for any other purpose.

Appointment of New Trustees under Scheme.

47. Where, under any scheme made before the passing of this Act relating to an educational charity, the approval of the Board of Education is required to the exercise by the trustees under the scheme of a power of appointing new trustees, the scheme shall, except in such cases as the Board may otherwise direct, have effect as if no such approval was required thereunder, and the Board may by order make such modifications of any such scheme as may be necessary to give effect to this provision.

Note 47.—This section came into force on the 8th August, 1918.

As to what is an " educational charity," reference may be made to

sec. 5 of the Endowed Schools Act, 1869; to the decision of the House of Lords in *In re Christ's Hospital*, L. R. 15 A.C. 172; and to *A. G.* v. *Christ Church, Oxford* (1894), 3 Ch. 524.

By sec. 2 (2) of the Board of Education Act, 1899 (p. 109), any question as to whether an endowment, or any part of an endowment, is held for, or ought to be applied to, educational purposes is to be determined by the Charity Commissioners. Subject to this, the powers of the Charity Commissioners relating to endowments held for educational purposes have been transferred to the Board of Education by that Act and the orders in Council made thereunder.

It was the practice of the Charity Commissioners, in making schemes for educational charities, to insert in the schemes a provision that the appointment of a new trustee should be subject to their approval. For some time a similar course was followed by the Board of Education, the appointments in the latter case being subject to the approval of the Board. More recently, schemes have permitted the co-option of new trustees without any approval, and presumably the experience thus gained has shewn that in older schemes the same practice may safely be followed. Accordingly sec. 47 directs that under all such schemes new trustees appointed where necessary by existing trustees shall come into office without any approval by the Board of Education. Care must be taken in any such case to comply with any directions in the scheme as to the qualification, if any, of the person to be appointed and especially if the trustee is to be representative of any class, interest, or society.

A modification of the scheme may be made by the Board if modification is necessary to give effect to the provision, but unless there is in the scheme express provision to the contrary—thus requiring the aid of the Board—the power to appoint new trustees without the approval of the Board appears to stand good, even without any such modification.

General.

Definitions.

48.—(1.) In this Act, unless the context otherwise requires,

The expression "child" means any child up to the age when his parents cease to be under an obligation to cause him to receive efficient elementary instruction or to attend school under the enactments relating to elementary education and the byelaws made thereunder;

The expression "young person" means a person under eighteen years of age who is no longer a child;

The expression "parent" in relation to a young person includes guardian and every person who is liable to maintain or has the actual custody of the young person;

The expression "practical instruction" means instruction in cookery, laundrywork, housewifery, dairywork, handicrafts, and gardening, and such other subjects as the Board declare to be subjects of practical instruction;

The expression "school term" means the term as fixed by the Local Education Authority;

The expression "sea service" has the same meaning as

in the Merchant Shipping Acts, 1894 to 1916, and includes sea-fishing service ;

Other expressions have the same meaning as in the Education Acts.

(2.) In the Education Acts the expressions "employ" and "employment" used in reference to a child or young person include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or young person or to any other person.

Note 48.—This section came into force on the 8th August, 1918.

A list of the expressions defined in the various statutes in this volume will be found in the Index under "Interpretation of Terms."

With regard to the definition of "child," it would appear from sec. 8 (1) and sec. 9 (1), read with this definition, that a child ceases to be a child for the purposes of this Act at the end of the school term in which he attains the age of fourteen years, unless, under sec. 8 (2) the age of fifteen years has been fixed by bye-law as the maximum age up to which parents may require their children to attend school. In this case childhood will continue to the end of the school term in which the child reaches the age of fifteen. As to blind and deaf children, see p. 466.

With regard to the expressions "employ" and "employment," sub-sec. (2) above follows the definition in sec. 13 of the Employment of Children Act, 1903. It is substituted for sec. 47 of the Education Act, 1876, which was as follows: "A parent of a child who employs such child in labour exercised by way of trade, or for the purposes of gain, shall be deemed for the purposes of this Act to take such child into his employment." This has now been repealed by the Act of 1918. The following cases arose under that section,—

In *Mather* v. *Lawrence* (1899), 1 Q. B. 1000; 68 L. J. B. Q. 714; 47 W. R. 559; 80 L. T. 600; 63 J. P. 455, it appeared that the father of a girl, between the ages of thirteen and fourteen years, kept her at home to do housework, although she was not exempted from school attendance, in order to enable his wife to go out to work and earn wages. The Court (Darling and Channell, JJ.) held that the father had not, under these circumstances, employed the child for the purposes of gain, so as to render himself liable to the penalty imposed by this section. And in *R.* v. *Austin*, 96 L. T. 29; 5 L. G. R. 126, a father was held not liable who kept a delicate child at home, and, by a doctor's advice, allowed the child to help him casually in his trade, but without making profit out of the child's help.

In the former case the decision would probably have been different if the present definition of employ and employment had then been in force.

See also *Neave* v. *Hills*, cited on p. 378.

Compensation to Existing Officers. 51 & 52 *Vict. c.* 41.

49. Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply to officers serving under Local Education Authorities at the passing of this Act who, by virtue of this Act or anything done in pursuance or in consequence of this Act, suffer direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, subject as follows :—

(*a*) Teachers in public elementary schools maintained by a Local Education Authority shall be deemed to be officers serving under that authority ;

(*b*) References to a county council shall include references to a borough or urban district council ;

(*c*) The reference to " the passing of this Act " shall be construed as a reference to the date when the loss arose ;

(*d*) The reference to the Acts and rules relating to His Majesty's civil service shall be construed as a reference to the Acts and rules which were in operation at the date of the passing of the Local Government Act, 1888 ; and

(*e*) Any expenses shall be paid by the council under whom the officer was serving at the date when the loss arose out of the fund or rate out of which the expenses of the council under the Education Acts are paid, and, if any compensation is payable otherwise than by way of an annual sum, the payment of that compensation shall be a purpose for which a council may borrow for the purposes of those Acts.

Note 49.—This section came into force on the 8th August, 1918.

Sec. 120 of the Local Government Act, 1888, the provisions of which with the adaptations referred to in the section are made applicable to compensation in the cases mentioned is as follows :—

120.—(1.) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act, or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.

(2.) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

(5.) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes.

This section, it will be observed, refers not only to officers serving under Local Education Authorities at the passing of this Act (*i.e.* on the 8th August, 1918), but also to any other officers who by virtue of the Act or anything done in pursuance or in consequence of the Act suffer direct pecuniary loss by abolition of office or by diminution or loss of fees or salary.

Officers.

The question as to what persons are included in the word "officers" is sometimes one of difficulty. There is no definition of the word in the Act of 1918, and therefore its meaning must be gathered from the context and from the use of the word in the other Education Acts with which, under sec. 52, the Education Act, 1918, is to be read. By sec. 35 of the Education Act, 1870, a school board might appoint necessary officers including the teachers required for any school provided by such board; and by sec. 36 they might appoint officers to enforce bye-laws with reference to the attendance of children at school. Sec. 28 of the Education Act, 1876 (repealed), authorised the school authority to appoint officers to act in the execution of that Act and of the bye-laws in force. Under these provisions

various officers of different grades have been appointed to carry on the administration of the Acts; clerks, attendants, messengers, caretakers, cleaners and servants have also been appointed.

By para. 16 of the Third Schedule to the Education Act, 1902, the officers of school boards were transferred to the Local Education Authorities established under that Act, and provision for the compensation of officers who suffered loss by the transfer was made by para. (21) similar to that in sec. 49 of the present Act.

Looking at all the provisions in these Acts, it seems that the word "officers" is intended to be used in its widest sense and to include for compensation purposes all the officials and servants who were in the employment of the Local Education Authorities on the 8th August, 1918. See *Gillow* v. *Durham C.C.* (1911), 2 K.B., on p. 1086. (The view there taken does not seem to be affected by the reversal of the decision of the Court of Appeal on the main point by the House of Lords, see p. 143, and *R.* v. *London County Council* (*ex parte Norris*), noted on p. 225).

The following cases, decided under other statutes may be referred to: In *Legge and others* v. *the Vestry of the Parish of Stoke Newington* (*Times*, 28th May, 1895), the question arose as to the claim to compensation of certain persons under the Metropolis Management (Plumstead and Hackney) Act, 1893, which, by sec. 11, provided that every "officer" who, in consequence of that Act, suffered any pecuniary loss by abolition of office, or by diminution or loss of salary or emoluments, should be entitled to have pecuniary compensation for such pecuniary loss paid to him. In that case it was held by Mr. Justice Day that the intention of the Act was that the permanent servants of the vestry who would be pecuniarily affected by the Act to their detriment should be compensated, and that the plaintiffs, who included the sanitary inspectors, the clerk to the sanitary committee, the hall porter, a messenger, and an office boy, all came within the section.

See also *R.* v. *Local Government Board*, L. R. 9 Q. B. 148, which had reference to a solicitor appointed at an annual salary by trustees having the management of the relief of the poor. It was held that the word "office," in its strict legal meaning, would not include such an office as this; but to give the word its strict legal sense would be to render the Act nugatory, and that the words of the Act must be construed with reference to the subject-matter and the context.

In *in re Carpenter and the Bristol Corporation* (1907), 2 K.B. 617; 5 L. G. R. 977, a borough extension Act provided for the abolition of a board of guardians and a rural district council having jurisdiction over an area added to the borough and also provided for compensation for loss of office, sec. 120 of the Local Government Act, 1888, being applied. A firm of solicitors had been employed by the guardians and the district council in connexion with their legal business. They had never been expressly appointed permanent solicitors to the guardians or council, but had in fact been the only solicitors employed by those bodies. They had not been paid any salary, or any remuneration in the nature of a salary, but had been paid ordinary professional charges in respect of the work done by them. The members of the firm claimed compensation under the Act, but the Court of Appeal held that the solicitors were not entitled to compensation, as they were not "officers" of the guardians or the district council.

In *Lawson* v. *Marlborough Guardians* (1912), 2 Ch. 154; 10 L. G. R. 443, a medical practitioner who was also district medical officer entered into a contract with the guardians to perform public vaccination in a district in their Union. He was paid a salary as medical officer, and fees for the children vaccinated by him under his contract. He became incapable of discharging his duties through bodily incapacity and

tendered his resignation, at the same time claiming a superannuation allowance under the Poor Law Officers Superannuation Act, 1896. It was held by Neville, J., that a public vaccinator is not an "officer" of the guardians for the purposes of the Poor Law Officers Superannuation Act, 1896, and that the fees paid to him as public vaccinator could not be taken into account in calculating the superannuation allowance to which he was entitled as medical officer.

See also *Latter* v. *Littlehampton Urban District Council*, 101 L. T. 172, 8 L. G. R. 211, which turned on the particular provisions of a local Act. The Act empowered the council to take over a ferry undertaking and construct a bridge in place of it, on condition that they should pay to those officers and servants of the ferry authority whom the council did not retain in the same or similar office or employment compensation for loss of office by reason of the transfer of the undertaking to the council. The plaintiffs had been in the employ of the ferry authority as ferrymen, and they passed into the employment of the council when the ferry was taken over, and they remained in the council's employment as ferrymen for two years until the bridge was built. The ferry was then discontinued and the plaintiffs were discharged by the council. They claimed compensation under the Act for loss of employment. Bucknill J., and the Court of Appeal held that the plaintiffs having been continued in their employment as ferrymen after the transfer of the undertaking, and until the construction of the bridge, could be dismissed by the council at a week's notice and were not entitled to compensation for subsequent loss of employment.

It is the duty of the Local Education Authority in fixing the compensation to have regard "to the conditions on which the appointment of the officer was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of the Act, or of anything done in pursuance of or in consequence of the Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under the Act, and to all the other circumstances of the case." There is also the additional condition that the amount "shall not exceed the amount which, under the Acts and rules relating to His Majesty's Civil Service, is paid to a person on abolition of office."

Abolition of Office.

As to what amounts to abolition of office:

It would appear from the case of *Foley* v. *The Mayor, Aldermen, &c., of the Borough of Battersea* (*Times*, March 13, 1902), that the office of an officer may be abolished, although arrangements to secure the results which were obtained by the service of the officer may still be necessary, the arrangements proposed being of a different character. In that case the plaintiff, who had been a collector of rates, brought an action to recover £75 as arrears of salary. It appeared that the plaintiff was in office as collector of rates on the 1st of November, 1900, the appointed day under the London Government Act, 1899, and continued to hold that office until March, 1901, when the council of the borough gave him notice that his office as collector of rates had been abolished by them. For the plaintiff it was contended that his office was not abolished, as the council immediately afterwards appointed other persons to collect the rates. For the borough council it was stated that when the powers of the overseers were, under the London Government Act, vested in the council of the borough, they considered what arrangements should be made with regard to the rate-collection. At that time there were six rate-collectors, who were receiving large salaries, and also eleven clerks

to keep the books, the cost amounting to £2,800 a year. A new scheme was arranged, under which there were eleven clerks, who delivered demand notes and received the rates in the office, this change resulting in a saving of nearly £1,500 a year. It was in consequence of this proposed new arrangement that the office of the plaintiff was abolished. His office had been abolished, and therefore he was not entitled to salary. Judgment was given for the defendants. Wright, J., said that it was clear that, under the London Government Act, there was the discretion given to the council of a borough to abolish an office, so long as they acted *bonâ fide* and deemed the office unnecessary. It was not suggested that the council had acted in this matter *malâ fide*. The council were no doubt right in thinking that the change which was made was expedient, as it was a substantial economy, and, under the circumstances, he thought that the council might consider that the old officers were unnecessary and might appoint other servants to do similar duties under the control of the town clerk, and therefore abolish the offices of the persons who had previously been acting as collectors. The action failed, but the plaintiff was entitled to compensation for loss of office.

When the office of an officer is abolished, and he is entitled by reason of that abolition to compensation for loss of office, he cannot recover damages for the determination of his appointment without the notice required by the terms of his contract. See *Clarke* v. *Mayor &c., of the Borough of Lewisham* (19 *Times* Law Rep. 62). In that case it appeared that the plaintiff, who had held the office of Secretary of the Lewisham District Board of Works, was entitled under the terms of his contract with them to three months' notice to determine his employment. The powers of the district board were by the London Government Act, 1899, transferred to the council of the borough of Lewisham. The plaintiff was transferred to the council, and they, acting under the powers conferred on them by the Act, abolished his office, giving him one week's notice, and this action was brought by him for wrongful dismissal. After the abolition of the office of the plaintiff he was awarded an annuity as compensation for loss of office. For the defendants objection was taken that the action was out of time by operation of sec. 1 (*a*) of the Public Authorities Protection Act, 1893, as it was not brought within six months from the act complained of, but the objection was overruled on the ground that the enactment did not apply to actions for damages for breach of contract. Mr. Justice Bigham said that under sec. 30 of the Act the defendants had power to abolish any office which they deemed unnecessary, but an officer whose office was abolished was entitled to compensation under sec. 120 of the Local Government Act, 1888, which was incorporated by reference into sec. 30 of the London Government Act in respect of any direct pecuniary loss resulting from the abolition. By sec. 30 of that Act a statutory alteration was made in the contract with the plaintiff which enabled the defendants to put an end to the contract at once, the compensation being supposed to be amply sufficient. The plaintiff had received, or ought to have received, compensation for the very loss claimed in the action. Judgment was accordingly given for the defendants.

See also *R.* v. *London County Council, Ex parte Scriven*, noted on p. 225.

As to cases in which it had been the practice to re-appoint the officer periodically and he had always been re-appointed, see *R.* v. *Norwich* (*Mayor, &c.*), noted on p. 223.

Compensation.

As to the duty of the Local Education Authority in assessing compensation the case of *Rex* v. *Mayor, &c., of Stepney* (1902), 1 K.B. 317

is important. It came before the High Court (Lord Alverstone, L.C.J., and Darling and Channell, JJ.) on a rule *nisi* to show cause why a *mandamus* should not issue directed to the Mayor, &c., of the Metropolitan Borough of Stepney, ordering them to assess the compensation due to the applicant owing to the abolition of his office under the London Government Act, 1899. The applicant was a solicitor who since 1872 had filled the office of Clerk to the vestry of Mile End. By the London Government Act, 1899, the powers of the vestry were transferred to the corporation of Stepney, and his office was abolished by the corporation under the powers conferred on them by that Act. The applicant whilst holding the office referred to had also carried on his private practice as a solicitor. He made his claim for compensation for loss of office, and it was referred to the finance committee of the corporation. The finance committee made inquiries at the Treasury as to their practice in the assessment of such compensations. In reply to their inquiries the Treasury stated that the practice under the Local Government Acts, 1888 and 1894, was to calculate the compensation of an officer, the whole of whose time had not been devoted to his office, as though his whole time had been so devoted, but to deduct one quarter of the amount thus arrived at. The result of these inquiries was reported by the finance committee, and they also reported that they were advised that the corporation were bound by the practice of the Treasury. The report of the finance committee was adopted by the corporation, and the compensation was assessed according to the Treasury practice. The applicant contended that the corporation were not so bound, and that if they acted simply on such practice they would not be inquiring into all the circumstances as they were bound to do in fulfilment of the statutory duty imposed on them by the Local Government Act, 1888. It was admitted that there were no Acts or statutory rules which affected the matter. The rule was made absolute. The Lord Chief Justice said—On the materials before us it is clear that the local authority have not acted in accordance with any statutory rule, but inquired as to the practice which is applied by the Treasury. The practice which appears to be applied —I have no doubt properly applied—in most cases, is that there is a deduction of 25 per cent. If there were any evidence before us that the borough council had themselves thought that 25 per cent. was the right deduction, or had exercised a discretion in the matter, I should not be a party to making the rule absolute ; but in this case, as they have acted upon something which I do not think is binding upon them, and they have not really exercised their discretion, I think that they ought to be ordered to entertain the case, having regard to the circumstances, before any question of the alternative remedy by appeal to the Treasury arises.

Rules of the Treasury.

The Rules of the Treasury at the passing of the Local Government Act, 1888, as to compensation to civil servants on abolition of office were as follows :—

The award of compensation allowances to established civil servants on the abolition of their offices was regulated by sec. 7 of the Superannuation Act of 1859, which provided that :—

" It shall be lawful for the Commissioners of the Treasury to grant to any person retiring or removed from the public service in consequence of the abolition of his office, or for the purpose of facilitating improvements in the organisation of the department to which he belongs, by which greater efficiency and economy can be affected, such special annual allowance by way of compensation as, on a full consideration of the circumstances of the case, may seem to the said commissioners to be a reasonable and just compensation for the loss

of office; and if the compensation shall exceed the amount to which such person would have been entitled under the Scale of Superannuation provided by this Act, if ten years were added to the number of years which he may have actually served, such allowance shall be granted by special minute, stating the special grounds for granting such allowance, which minute shall be laid before Parliament, and no such allowance shall exceed two-thirds of the salary and emoluments of the office."

In calculating allowances under this section, it is the practice of the Treasury to award as many sixtieths of the officer's emoluments as he has served complete years, with a special addition, on account of abolition of office, not exceeding the following scale, viz. :—

Actual Service.	Addition.
20 years or upwards	$\frac{10}{60}$
15 ,, and less than 20	$\frac{7}{60}$
10 ,, and less than 15	$\frac{5}{60}$
5 ,, and less than 10	$\frac{3}{60}$
Under 5 ,, ...	$\frac{1}{60}$

When the duties of the situation have not been such as to require the holder to give his whole time to the public service, such deduction is made from the amount of compensation allowance for which he would otherwise be qualified as the Treaury consider reasonable. As a rule, the deduction is one-fourth of the whole (see case on page 433).

It must be observed that all awards under the section are at the absolute discretion of the Treasury, and are subject to modification if the Board consider that the circumstances of the particular case require it.

Emoluments.

With regard to the question as to what may be regarded as emoluments the cases of *R.* v. *The Mayor, Aldermen, &c., of the Borough of Bridgewater* (6 A. and E. 339); *R.* v. *The Local Government Board* (L. R. 6 Q. B. 785); and *R.* v. *Postmaster-General* (L. R. 3 Q. B. D. 428), may be referred to.

In the case of *R.* v. *Mayor, Aldermen, &c., of the Borough of Bridgewater* it appeared that before and until the passing of the 5 & 6 Will. 4, c. 76, T. was the common clerk, prothonotary, and clerk of the peace, of the Borough of Bridgewater, during good behaviour, and he acted as clerk to the justices of the borough, as by usage the common clerk had always done, either, as T. alleged, incidentally to the office of common clerk, or, as was alleged in answer, by appointment of the justices. It was held by the Court (Lord Denman, C. J., and Williams and Coleridge, JJ.) that the remuneration received by him as clerk to the justices should be considered in fixing the compensation, the common clerk having lost perquisites and emoluments which were previously attached to his office.

In *R.* v. *The Local Government Board*, the clerk to the guardians of a union, who was also a solicitor, was, by the dissolution of the union, deprived of his office of clerk. The 30 & 31 Vict., c. 106, sec. 20, enacted that, "when any union shall be dissolved, if any person shall by means of such dissolution be deprived of any office or employment, the Poor Law Board may, according to their judgment, award a compensation to be paid to such person." Compensation was awarded to the clerk accordingly. One of the items taken into consideration in fixing the amount of the compensation was as follows: "Professional charges connected with the proceedings against the Metropolitan Railway Company for recovering compensation for property belonging to the guardians and not covered by the salary, £169."

A rule was obtained on behalf of the guardians of the City of London Union, to show cause why a writ of *certiorari* should not issue to remove into the Court the order by which this compensation was fixed. It was argued that, supposing the clerk had been entitled to charge for the services in question, they were in no way incident to his office of clerk. He need not have been employed for this legal business, though he held the office of clerk, and he might have been employed though he had never held that office. The Court (Blackburn and Montague Smith, JJ.) held that the rule must be discharged. Blackburn, J. : " The question arises whether the Poor Law Board, in assessing compensation, were tied down to those things which were strictly legally attached to the office, or whether they might say that the office was worth so much more because of the good will annexed to it. The guardians might have taken away this employment, but might not the Poor Law Board look to the probability of its continuance ? By analogy to the compensation under the Lands Clauses Acts, I think the goodwill of the office of clerk to the guardians might be taken into account." Mellor, J. : " This business relating to the compensation to the guardians was not part of the ordinary business of their clerk, but was independent of, though arising out of, his office as clerk. In the assessment of the damages he had suffered by the loss of his office in respect of which he was to be compensated, I think the Board were right in taking that matter into their consideration, as being kindred to the office. It was, I think, within the purview of the statute, as being business incident, not to his office as attorney, but as attorney and clerk to the guardians."

In *R.* v. *The Postmaster-General*, an officer of a telegraph company, whose undertaking was transferred to the Postmaster-General, was entitled, if the appointment was determined, to an annuity by way of compensation for loss of office equal to a certain porportion of the annual emoluments derived by him from his office. It was part of the duty of the officer, when required, to travel on the company's business. When he so travelled, his ordinary salary ran on, but his additional expenses were paid by the company, who agreed that he should receive certain fixed weekly sums in lieu of making him bring in an account of his expenditure and then repaying it. It was claimed by the officer that the amount saved by him out of the sums so paid for travelling expenses was to be taken into consideration in calculating the annual emolument derived by him from his office. The Court held, affirming the decision of the Queen's Bench Division, that the sums so saved should be taken into consideration in fixing the amount of the compensation. Bramwell, L.J., said, " The question is, What was the annual emolument of the officer ? A portion of it was what he could save out of the allowance made to him during the time of his absence from home. The Legislature could not have used a word more comprehensive, and the reasonable construction of the statute requires that it should be extended to a case like the present. What was the office worth to the officer ? It was worth so much in salary and so much in profit made out of allowances, made not surreptitiously or wrongly."

In *Shelford* v. *Mosey* an agreement with a seaman to serve on a British ship during a particular voyage provided for the payment of wages to him and a bonus of 15 per. cent. : Held that the bonus was part of the seaman's emoluments. ((1917), 1 K. B. 154 ; 80 J.P. 463.)

See also *Livingstone* v. *Westminster Corporation* (1904), 2 K. B. 109 ; 2 L. G. R. 581., and *Tennant* v. *Smith* (1892), A. C. 150.

As to the fund or rate out of which the expenses of a council under this Act are to be paid, see sec. 18 of the Education Act, 1902, p. 181.

Extension of certain provisions of the Education Acts.

50. The provisions of the Education Acts mentioned in the first column of the First Schedule to this Act shall apply with respect to young persons, continuation schools, and the Education Acts and instruments made thereunder in like manner as they apply with respect to children, elementary schools, and the enactments mentioned in those provisions and instruments made under those enactments, and accordingly those provisions shall have effect as set out and modified in the second column of that schedule.

Note 50.—This section came into force on the 8th August, 1918, so far as is necessary to give effect to the provisions of the Order of the Board of Education, dated 8th August, 1918, appointing that date as the "appointed day for the sections set out in the footnote on p. 438. See also p. 633.

The extensions referred to in the section have been made in the enactments to which they respectively refer.

Repeals.

51. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Note 51.—The repeals effected by this section came into operation on the appointed day; and under sec. 52 (3), different days may be fixed for the repeal of different enactments. Notes to the Second Schedule show the dates fixed so far as they have been fixed up to the 18th February, 1920, by Orders of the Board of Education: see p. 633.

The Order of the Board of Education, dated 8th August, 1918, declared that the whole of sec. 51 came into operation on the 8th August, 1918, so far as is necessary to give effect to the provisions of that Order.

Short Title, Construction, Extent, and Commencement.

52.—(1.) This Act may be cited as the Education Act, 1918, and shall be read as one (2) with the Education Acts, 1870 to 1916, and those Acts and this Act may be cited together as the Education Acts, 1870 to 1918, (1) and are in this Act referred to as "the Education Acts."

(2.) This Act shall not extend to Scotland or Ireland.

(3.) This Act shall come into operation on the appointed day, and the appointed day shall be such day as the Board of Education may appoint, and different days may be appointed for different purposes and for different provisions of this Act, for different areas or parts of areas, and for different persons or classes of persons:

Provided that the appointed day for the purpose of sub-sections (1) and (2) of section eight shall not be earlier than the termination of the present war (4) and for the purposes of paragraph (iii.) of sub-section (2) of section thirteen shall not be earlier than three years after the passing of this Act, and that for a period of seven years from the appointed day the

duty of the council of a county (other than the London County Council) shall not include a duty to establish certified schools for boarding and lodging physically defective and epileptic children.

Note 52.—This section came into force on the 8th August, 1918.

(1.) The following are the Acts which may be cited together as the Education Acts, 1870 to 1918, so far as they are unrepealed. They are referred to in this Act as "the Education Acts"—

The Elementary Education Act, 1870; 33 & 34 Vict. c. 75.
The Elementary Education Act, 1873; 36 & 37 Vict. c. 86.
The Elementary Education Act, 1876; 39 & 40 Vict. c. 79.
The Elementary Education Act, 1880; 43 & 44 Vict. c. 23.
The Elemenary (Blind and Deaf Children) Act, 1893; 56 & 57 Vict. c. 42.
The Elementary Education (Defective and Epileptic Children) Act, 1899; 62 & 63 Vict. c. 32.
The Elementary Education Act, 1900; 63 & 64 Vict. c. 53.
} The Education Acts, 1870-1900.

The Education Act, 1902; 2 Edw. 7. c. 42. The Education Acts, 1870-1902.
The Education (London) Act, 1903; 3 Edw. 7. c. 24. The Education Acts, 1870-1903.
The Education (Administrative Provisions) Act, 1907; 7 Edw. 7. c. 43. The Education Acts, 1870-1907.
The Education (Administrative Provisions) Act, 1909; 9 Edw. 7. c. 29. The Education Acts, 1870-1909.
The Education (Choice of Employment) Act, 1910; 10 Edw. 7. & 1 Geo. 5. c. 37. The Education Acts, 1870-1910.
The Education (Administrative Provisions) Act, 1911; 1 & 2 Geo. 5. c. 32. The Education Acts, 1870-1911 (omitting the Act of 1910).
The Elementary Education (Defective and Epileptic Children) Act, 1914; 4 & 5 Geo. 5. c. 45. The Education Acts, 1870-1914 (including the Act of 1910.)
The Elementary Education (*Fee Grant*) *Act*, 1916 (repealed); 6 & 7 *Geo.* 5. *c.* 35. The Education Acts, 1870-1916.
The Education Act, 1918; 8 & 9 Geo. 5. c. 39. The Education Acts, 1870-1918.

(2.) *Read as one*: It is to be noted that the Education Act, 1918, is to be read as one with the other Acts set out above. The effect of this direction is that we must construe every part of each of the Acts as if it had been contained in one Act, unless there is some manifest discrepancy, making it necessary to hold that a later Act has to some extent modified something found in the earlier Act (Lord Selborne, L.C., in *Canada Southern Railway Co.* v. *International Bridge Co.*, L. R. 8 A.C., on p. 727).

As illustrating how a provision in a later Act may vary an earlier Act that is to be read with it, reference may be made to *Charing Cross, &c., Electricity Supply Co.* v. *London Hydraulic Power Co.* (1914), 3 K. B. 772; 12 L. G. R. 807. There, two water mains had been laid, under a private Act which did not contain a clause providing that nothing in the Act should exempt the defendants from liability for nuisance. Other two mains were laid under a later Act which did contain that clause and also provided that the two Acts should be construed together as one Act. The Court held that as the Acts were to be read together, the privilege which existed under the earlier Act was taken away by the later Act and that consequently the defendants had no statutory protection in the case of any of the four mains, and were therefore liable to the plaintiffs as for a nuisance.

And in *Read* v. *Joannon*, 25 Q. B. D. 300, where the Bills of Sale Act, 1882, enacted that the Act should, so far as was consistent with the tenor thereof, be construed as one with the Bills of Sale Act, 1878, Lord Coleridge C. J., held (see. p. 304) that having regard to the enactment referred to, the words "Nothing in this Act," in the Act of 1882, really meant nothing in that Act or in the Act of 1878.

See also *In re Kedwell and Flint & Co.* (1911), 1 K.B. 797, where certain provisions in an earlier Act were read as part of a later Act, pursuant to a provision in the later Act that that Act should be read and construed as part of the earlier Act.

(3.) The date fixed as "the appointed day" has been noted under the respective sections and under the Second Schedule, so far as they have been fixed up to the 18th February, 1920, by the Board of Education, see p. 663.*

See the Circular 1118, issued by the Board of Education on the 2nd July, 1919 (Appendix, p. 631).

(4.) The method of fixing the date of the termination of the war has been laid down for various purposes by the Termination of the Present War Definition Act, 1918. In due course an Order in Council will be issued for finally settling that date. On the 18th August, 1919, Mr. Bonar Law, M.P., in the House of Commons said that the general termination of the War will not be declared until peace has been ratified with all our enemies. The war cannot be said to have been terminated up to the present moment (*i.e.*, the 18th February, 1920).

FIRST SCHEDULE.

Extension of Enactments.

Enactment extended.	Enactment as extended.
Elementary Education Act, 1870. s. 36	Every Local Education Authority may, if they think fit, appoint an officer or officers to enforce the Education Acts and any bye-laws, orders, or other instruments made thereunder with reference to the attendance of children or young persons at school . . .
s. 81	Certificates, notices, requisitions, orders, precepts, and all documents required by the Education Acts or any regulations or bye-laws made thereunder to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, till the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the certificate, notice, requisition, order, precept, or document was prepaid, and properly addressed, and put into the post.

* On the 8th August, 1918, the following sections were brought into operation 7, 8, 15, 16 partly, 17, 18 partly, 19, 21, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40 partly, 41, 43, 45, 46-49, 50 and 51 partly, and 52.

Enactment extended.	Enactment as extended.
s. 84	After the expiration of three months from the date of any order or requisition of the Board of Education under the Education Acts such order or requisition shall be presumed to have been duly made, and to be within the powers of the Education Acts, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.
Elementary Education Act, 1873. s. 24	With respect to proceedings before a court of summary jurisdiction for offences and penalties under the Education Acts, or any bye-laws made thereunder the following provisions shall have effect :—
	* * * * * *
	(4.) Any justice may require by summons any parent or employer of a child or young person, required by the Education Acts or by any bye-laws, orders, or other instruments made thereunder to attend school, to produce the child or young person before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the court, to comply with such summons, shall be liable to a penalty not exceeding twenty shillings.
	(5.) A certificate purporting to be under the hand of the principal teacher of a public elementary or continuation school, stating that a child or young person is or is not attending such school, or stating the particulars of the attendance of a child or young person at such school, shall be evidence of the facts stated in such certificate.
	(6.) Where a child or young person is apparently of the age alleged for the purposes of the proceedings, it shall lie on the defendant to prove that the child or young person is not of such age.
	* * * * * *
	(8.) Where a Local Education Authority are, by reason of the default of the managers or proprietor of an elementary or continuation school, unable to ascertain whether a child or young person who is resident within the district of such Local Education Authority and attends such school attends school in conformity with the Education Acts or any bye-laws, orders, or other instruments made thereunder, it shall lie on the defendant to show that the child or young person has attended school in conformity with the said Acts, bye-laws, orders, or other instruments.
Elementary Education Act, 1876. s. 38	No legal proceedings for non-attendance or irregular attendance at school shall be commenced in a court of summary jurisdiction by any person appointed to carry out the Education Acts or any bye-laws made thereunder, except by the direction of not less than two members of the education committee of a Local Education Authority, or of any sub-committee appointed by that committee for school attendance purposes.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section seventeen. (*f*) In section twenty from the beginning of sub-sec. (2) to the end of sub-sec. (8). (*c*) Section fifty-two. (*c*) Sections sixty-seven to seventy-two. (*c*) Section seventy-three. (*c*) In section seventy-four the words "(3) Providing for the remission or payment of the whole or any part of the fees of any child where the parent satisfies the school board that he is unable from poverty to pay the same" (*f*); and the words from "Provided that any bye-law" down to the words "specified in such bye-law." Section ninety-four. (*c*) Section ninety-seven from "Provided that no such minute" to the end of the section. (*c*)
35 & 36 Vict. c. 27.	The Elementary Education Act Amendment Act, 1872.	The whole Act. (*c*)
36 & 37 Vict. c. 86.	The Elementary Education Act, 1873.	Section fifteen. (*c*) Section nineteen. (*c*) Sub-secs. (3) and (7) (*e*) of section twenty-four, and in sub-sec. (5) the words "or stating that a child has been certified by one of Her Majesty's Inspectors to have reached a particular standard of education."
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	Section five. Section six. Section seven from "Provided that" to the words "by information and otherwise." Section nine. Section ten. (*f*) In section eleven the words "who is under this Act prohibited from being taken into full time employment." (*a*) Secton nineteen. In section twenty-four from the beginning of the section down to "the parent of such child"; and the words "and the persons by whom and the form in which certificates of the said proficiency and due attendance are to be granted, and with respect to other matters relating thereto"; and the words "and other records of such proficiency and attendance."

Session and Chapter.	Short Title.	Extent of Repeal.
		Section twenty-eight.
		Section twenty-nine.
		Section thirty-five. (*f*)
		In section thirty-seven the words from "And every person who shall fraudulently" down to "not exceeding fourteen days." (*f*)
		Section thirty-nine.
		Section forty. (*f*)
		Section forty-five. (*c*)
		Section forty-six.
		Section forty-seven.
		Section fifty.
		The First Schedule.
43 & 44 Vict. c. 23.	The Elementary Education Act, 1880.	Section four.
		Section five.
53 & 54 Vict. c. 22.	The Education Code (1890) Act, 1890.	The whole Act.
54 & 55 Vict. c. 56.	The Elementary Education Act, 1891.	The whole Act. (*f*)
55 & 56 Vict. c. 29.	The Technical and Industrial Institutions Act, 1892.	In section ten the words "but every such conveyance or assurance shall be enrolled as soon as may be in the books of the Charity Commissioners." (*c*)
56 & 57 Vict. c. 51.	The Elementary Education (School Attendance) Act, 1893.	The whole Act.
60 & 61 Vict. c. 32.	The School Board Conference Act, 1897.	The whole Act. (*e*)
62 & 63 Vict. c. 13.	The Elementary Education (School Attendance) Act (1893) Amendment Act, 1899.	The whole Act.
63 & 64 Vict. c. 53.	The Elementary Education Act, 1900.	Section one. (*f*)
		In section six the words "and in section four of the Elementary Education Act, 1880."
		Section seven.
1 Edw. 7. c. 11.	The Education Act, 1901.	The whole Act. (*c*)
1 Edw. 7. c. 22.	The Factory and Workshop Act, 1901.	Sections sixty-eight to seventy-two except as respects children lawfully employed in factories and workshops at the commencement of this Act and except as respects Scotland and Ireland.

Session and Chapter.	Short Title.	Extent of Repeal.
2 Edw. 7. c. 19.	The Education Act (1901) (Renewal) Act, 1902.	The whole Act. (*c*)
2 Edw. 7. c. 42.	The Education Act, 1902.	In sub-sec. (1) of section two from "Provided that the amount" to the end of the sub-sec. (*c*) Sub-sec. (5) of section seven from "and in any case" to the end of the sub-sec. (*c*) Section ten. (*f*) Section fourteen. (*f*) Sub-sec. (7) of section seventeen. (*c*) Sub-sec. (1) of section twenty-one. (*c*) In sub-sec. (2) thereof the words "or provisional order," in sub-sec. (3) thereof the words "or any provisional order made for the purposes of such a scheme." (*c*) Sub-secs. (5) and (10) of section twenty-three. (*c*) In the Third Schedule, paragraph (1), from "except as respects" to the end of the paragraph, (*c*) and paragraph (5). (*f*)
3 Edw. 7. c. 10.	The Education (Provision of Working Balances) Act, 1903.	The whole Act. (*c*)
3 Edw. 7. c. 24.	The Education (London) Act, 1903.	In the First Schedule, paragraphs (2) and 7. (*c*)
7 Edw. 7. c. 43.	The Education (Administrative Provisions Act, 1907.	Section four, without prejudice to the legality of anything retrospectively legalised thereby. (*c*) In sub-sec. (1) of section fourteen the words "or a ground of exemption for the purposes of section nine of the latter Act."
9 Edw. 7. c. 29.	The Education (Administrative Provisions) Act, 1909.	Section three, without prejudice to the legality of anything retrospectively legalised thereby. (*c*)
5 & 6 Geo. 5. c. 95.	The Education (Small Population Grants) Act, 1915.	The whole Act.
6 & 7 Geo. 5. c. 35.	The Elementary Education (Fee Grant) Act, 1916.	The whole Act. (*f*)

The repeal came into operation on the—
(*a*) 8th August, 1918;
(*c*) 1st November, 1918;
(*e*) 2nd December, 1918;
(*f*) 1st April, 1919.
See also the note to sec. 51 above.

EDUCATION (COMPLIANCE WITH CONDITIONS OF GRANTS) ACT, 1919.

(9 & 10 Geo. V. c. 41.)

An Act to enable Governing Bodies of Schools and Educational Institutions to comply with the conditions prescribed in the Regulations of the Board of Education for the receipt of grants out of moneys provided by Parliament.

[15*th August*, 1919.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Powers of Governing Bodies to comply with Conditions as to Grants.

1. Any provisions contained in any instrument regulating the trusts or management of a school or educational institution which are inconsistent with the conditions prescribed for the receipt of grants out of moneys provided by Parliament in the regulations of the Board of Education shall, if the governing body of the school or educational institution apply to the Board for a grant under those regulations, cease to operate or operate subject to such modifications as may be necessary in order to render the instrument consistent with those regulations and as may be made by the governing body, so long as grants are made by the Board under those regulations and during any school year in which the school has been recognised by the Board for the purpose of grants.

Note 1.—It sometimes happens that the Trust Deed, Scheme, Charter or other instrument governing a school contains some provision which is inconsistent with the regulations for grant issued by the Board of Education. For instance, under a regulation of the Board, if a school is to qualify for a grant, the governing instrument of the school must not require any members of the teaching staff to belong, or not to belong, to any particular religious denomination. Some schools having restrictive conditions of this sort are providing education of the kind which Local Education Authorities are setting up and they desire to receive grants in aid of their work; but though the governing bodies are willing to comply with the requirements of the Board of Education their governing instrument has precluded them from doing so. Previous legislation has gone some way to meet the difficulty. See for instance, sec. 99 of the Education Act, 1870,

as extended by Article 7 of the Third Schedule to the Education Act, 1902 (p. 227).

The present Act goes farther and now, notwithstanding any restrictive provisions contained in the governing instruments of a school, if the governing body desire to obtain a grant and are able to qualify for it, they can apply for a grant under the appropriate regulations and immediately they do so the conditions which are inconsistent with the regulations of the Board will at once cease to operate, or will operate only with modifications necessary to enable the grant to be made.

Short Title.

2. This Act may be cited as the Education (Compliance with Conditions of Grants) Act, 1919, and the Education Acts, 1870 to 1918, and this Act may be cited together as the Education Acts, 1870 to 1919.

Note 2.—The Acts which comprise the Education Acts, 1870 to 1918, are set out in the note to sec. 52 of the Education Act, 1918, above. The present Act may be cited with those Acts, but it is not to be read as one with them, and in that respect it differs from most of the Acts included as the Education Acts, 1870 to 1918.

APPENDIX A.

Education of Children who are blind or deaf or mentally or physically deficient.

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THE ELEMENTARY EDUCATION (BLIND AND DEAF CHILDREN) ACT, 1893.

(56 & 57 Vict., c. 42.)

An Act to make better provision for the Elementary Education of Blind and Deaf Children in England and Wales.

[12*th September*, 1893.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Obligation of Parents as to Blind and Deaf Children.

1.—(1.) The efficient elementary instruction which under the Elementary Education Act, 1876, a parent must cause his child to receive, shall, in the case of a blind or deaf child, be construed as including instruction suitable to such a child, and the fact of a child being blind or deaf shall not of itself, except in the case of a deaf child under seven years of age, be a reasonable excuse for not causing the child to attend school, or for neglecting to provide efficient elementary instruction for the child. (1)

(2.) In the case of a blind or deaf child, the fact that there is not within any particular distance from the residence of the child any public elementary school which the child can

attend shall not of itself be a reasonable excuse for not causing the child to attend school, or for neglecting to provide efficient elementary instruction for the child. (2)

Note 1.—(1.) The Elementary Education Act, 1876, by sec. 4 provides that it shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic. This instruction in the case of a blind or deaf child is to be construed as including instruction suitable to such a child. Expressions in this Act, unless the contrary intention appears, have the same meaning as in the Elementary Education Acts, 1870 to 1891. (sec. 15 (1).) The definition given in sec. 3 of the Elementary Education Act, 1870, of the term "parent" therefore applies, and it includes "guardian and every person who is liable to maintain or has the actual custody of a child." As to this definition, see note 6 to sec. 3 of the last-mentioned Act.

For the purposes of this Act the expression "blind child" means "a child too blind to be able to read the ordinary school books used by children," and the expression "deaf child" means a child too deaf to be taught in a class of hearing children in an elementary school. (Sec. 15 (1).) A blind or deaf boy or girl is to be deemed for the purposes of the Elementary Education Acts a "child" until the age of sixteen years. (Sec. 11.) The age for compulsory attendance at school of a blind child begins at five years, and of a deaf child at seven years. Subject to this, every blind or deaf boy or girl, notwithstanding anything in the Elementary Education Acts or the bye-laws, must receive efficient elementary instruction in reading, writing, and arithmetic until the age of sixteen years.

(2.) The Elementary Education Act, 1870, by sec. 74, provides that it shall be a "reasonable excuse" for non-attendance at school in accordance with bye-laws if there is no public elementary school open which the child can attend within such distance not exceeding three miles, measured according to the nearest road from the residence of such child as the bye-laws may prescribe. There are other enactments in the Elementary Education Act, 1876 (secs. 9 and 11) which confer exemptions in consequence of the distance of the residence of the child from a public elementary school which the child can attend. In the case of a blind or deaf child within the limits of age referred to above, neither the fact of the child being blind or deaf, nor the fact that there is not within any particular distance from the residence of the child any public elementary school which the child can attend, will of itself be a reasonable excuse for not causing the child to attend school or for neglecting to provide elementary instruction for the child.

It will be observed from sec. 3 of 62 & 63 Vict., c. 32, p. 462, that a Local Education Authority may provide guides or conveyances for children who in the opinion of that authority are by reason of any physical or mental defect unable to attend school without guides or conveyances and by sec. 14 of the Education (Administrative Provisions) Act, 1907, distance from school is not a reasonable excuse for non-attendance when conveyance is provided.

Duty of School Authority with respect to Blind and Deaf Children.

2.—(1.) It shall be the duty of every school authority, as defined by this Act, to enable blind and deaf children resident in their district, for whose elementary education efficient and suitable provision is not otherwise made, to

obtain such education in some school for the time being certified by the Education Department as suitable for providing such education, and for that purpose either to establish or acquire and to maintain a school so certified, or to contribute on such terms and to such extent as may be approved by the Education Department, towards the establishment or enlargement, alteration, and maintenance of a school so certified, or towards any of these purposes, and, where necessary or expedient, to make arrangements, subject to regulations of the Education Department, for boarding out any blind or deaf child in a home conveniently near to the certified school where the child is receiving elementary education. (1)

(2.) Provided that the duty of a school authority under this section shall not extend to children who are—

(*a*) idiots or imbeciles ; or

(*b*) resident in a workhouse or in any institution to which they have been sent by a board of guardians from a workhouse ; or

(*c*) boarded out by guardians. (2)

(3.) Where a school authority contributes under this section to the establishment, enlargement, or alteration of a certified school maintained by another authority, the terms approved by the Education Department shall include security for repayment of the value of the contribution, in the event of the school ceasing to be certified.

Note 2. —(1.) The school authority for the purposes of the Act is the Local Education Authority : see sec. 4.

Sec. 1 of the Act having imposed on parents of blind and deaf children the duty of causing such children to receive efficient elementary instruction, this section, subject to the exceptions provided for by sub-sec. (2), imposes on every Local Education Authority the duty of enabling such children resident in their district, for whose education efficient and suitable provision is not otherwise made, to obtain such education in some school for the time being certified by the Board of Education as suitable for providing such education.

The power of an Education Authority under Part III. to make payments in respect of the instruction or maintenance of a blind or deaf child ceases when the child attains the age of sixteen years, but the Authority for higher education may continue the childs education after that age.

With regard to the expression "resident in their district," see sec. 15 (2). The term "elementary education" may include industrial training.

As to the conditions which must be fulfilled to admit of a school being certified by the Board of Education, see sec. 7 (1). The certificate to a school must be annual. The term "school" is defined by sec. 15 (1), on p. 456.

The Local Education Authority may discharge the duty imposed on them by this section in different modes. (1.) They may establish or acquire and maintain a school certified by the Board of Education. For this purpose they have all the powers of a Local Education Authority for the provision of school accommodation for their district. (See sec. 19 of the Education Act, 1870. (2.) They may contribute on such terms and to such extent as may be approved by the Board of

Education towards the establishment or enlargement, alteration and maintenance of a school so certified, or towards any of these purposes. In the case of any such contribution, the terms approved by the Board of Education are to include security for the repayment of the value of the contribution in the event of the school ceasing to be certified. See also sec. 3 as to the representation of the contributing Local Education Authority on the governing body of the school to which they contribute. (3.) They may, where necessary or expedient, make arrangements for boarding out blind and deaf children in houses conveniently near to the certified school where the child is receiving elementary education. The Board of Education have issued rules as to buildings for blind and deaf children and the boarding out of such children. See the Regulations of 1st April, 1917, pages 27 and 30. [Cd. 8505:—1917].

(2.) Boards of guardians were empowered by the Poor Law (Certified Schools) Act, 1862, and the Divided Parishes and Poor Law Amendment Act, 1882, to send deaf and dumb children, on certain terms as to cost of maintenance, to schools certified by the Local Government Board, and sec. 42 of the Poor Law Amendment Act, 1868, provided that the guardians might, with the approval of the Local Government Board, send any poor deaf and dumb or blind child to any school fitted for the reception of such child, though such school had not been certified by the Board. But these enactments were repealed by sec. 13 (1) of this Act so far as they empowered boards of guardians to send to schools blind and deaf children under the age of sixteen years, except in the cases of the three classes of children specifically mentioned in this sub-section. The responsibility for the care and instruction of the children of the three classes mentioned in the sub-section devolves on the guardians.

Power to make Provision for Representation.

3. The terms of contribution approved by the Education Department may include provision for representation of the contributing school authority on the governing body of the school to which it contributes, in cases where such representation appears to the Education Department to be practicable and expedient.

Constitution of School Authority.

4. The school authority for the purposes of this Act shall be—

(*a*) for an area under a school board, the school board. . . .

Note 4.—The reference to the school board is to be construed as a reference to the Local Education Authority: see Third Schedule (1) to the Education Act, 1902, and see sec. 1 of the Education (London) Act, 1903. The school authority under this Act are therefore the Local Education Authority, and their district is the area for which they act.

As to the transfer to the County Council of the property or rights acquired, and the liabilities incurred under this Act by a District Council, which ceased by reason of the Education Act, 1902, to be a school authority, see Second Schedule (7) to that Act.

Powers and Expenses of School Authority.

5.—(1.) For the performance of their duties under this Act a school authority may, without prejudice to any other

powers, exercise the like powers as may be exercised by a school board for the provision of school accommodation for their district, and the consent of the [*Education Department*] to the exercise of the power of borrowing for the purposes of this Act may be given in any case in which the exercise of that power appears to the Department expedient.

(2.) The expenses of a school authority under this Act shall be paid out of the fund applicable to their general expenses. . . .

Note 5.—The Local Education Authority are the school authority under the Act : see sec. 4.

With regard to the powers of the Local Education Authority as to the provision of school accommodation for their district, see sec. 19 of the Education Act, 1870.

As to the powers of borrowing by the Local Education Authority, see sec. 19 of the Education Act, 1902. By the Third Schedule (8) to that Act, it is provided that a reference to the Local Government Board shall be substituted for the reference to the Education Department in sec. 5 of the Elementary Education (Blind and Deaf Children) Act, 1893, and the Minister of Health is now substituted for the Local Government Board.

See also sec. 18 of the Education Act, 1902, as to the expenses of the Local Education Authority, and the Second Schedule (7) to that Act, with regard to the raising of expenses to meet liabilities of a school authority (whether a District Council or not) transferred to the County Council.

See sec. 9, with respect to the liability of parents to contribute towards the expenses of the maintenance of blind or deaf children. Any sums so received by the Local Education Authority from parents may be applied in aid of the general expenses of the authority.

Conditions and Effect of Grant of Certificate to School for Blind or Deaf Children.

7.—(1.) A school shall not be certified by the Education Department as suitable for providing elementary education for blind or deaf children—

(*a*) if it is conducted for private profit ; nor

(*b*) unless it is either managed by a school authority, or the annual expenses of its maintenance are, *to the extent of not less than one third, defrayed out of sources other than local rates, or moneys provided by Parliament, and are* audited and published in accordance with regulations of the Education Department ; nor (1)

(*c*) unless it is open at all times to the inspection of Her Majesty's Inspectors of Schools and of any visitors authorised by any school authority sending children to the school ; nor

(*d*) unless the requirements of this Act are complied with in the case of the school.

(2.) Every school so certified (in this Act referred to as a certified school) shall be deemed to be a certified efficient

school within the meaning of the Elementary Education Act, 1876, and for the purposes of section eleven of that Act may, in the case of a blind or deaf child, be treated as if it were a public elementary school (2.)

(3.) A certificate granted in pursuance of this section shall be annual.

(4.) For the purposes of this section there shall be included in local rates any sum received under this Act by a school authority from a parent and applied towards the general expenses of the school authority. (3)

Additional Statutory Provision.

Sec. 9 of the Education (Administrative Provisions) Act, 1907, provides as follows,—

"The condition that the annual expenses of the maintenance of a school not managed by a school authority are, to the extent of not less than one third, to be defrayed out of sources other than local rates or moneys provided by Parliament, shall cease to be a condition required for the grant of a certificate under section seven of the Elementary Education (Blind and Deaf Children) Act, 1893, to such a school as a school suitable for providing elementary education for blind or deaf children." The provision to that effect was repealed accordingly.

Note 7.—(1.) The Local Education Authority are the school authority for the purposes of this Act : see sec. 4.

Local rates are to be deemed to include sums received by school authorities from parents, and applied towards the general expenses of those authorities : see sub-sec. (4).

With regard to moneys provided by Parliament, see sec. 12.

The Education Department on the 28th of January, 1895, ordered that the following regulations should be observed with reference to the audit and publication of the accounts of the annual expenses of maintenance of certified schools under the Act, not maintained by school authorities :—

"(1.) The accounts shall be audited annually, either by a chartered accountant, a banker or bank manager, or a professional auditor.

"(2.) Immediately on the receipt of the inspector's annual report on the school, the managers must publish the last account of income and expenditure, furnished to the Department, by advertisement in one or more newspapers circulating in the district supplied by the school. They must also publish in the same manner, and at the same time, a notice that the said account will be, during the ensuing year, open to inspection at the school or other convenient place at any reasonable time except the ordinary school hours, and that copies or extracts may be made, and they must submit the same to inspection, and permit such copies or extracts to be made accordingly."

(2.) As every school certified by the Board of Education under the Act is to be deemed a certified efficient school, within the meaning of the Elementary Education Act, 1876, any such school comes within the provisions of secs. 5, 9, 11, 14, 24, and 48 of that Act, and for the purposes of sec. 11 of the Act referred to is in the case of a blind or deaf child to be treated as a public elementary school.

The effect of the provision, as regards sec. 11 of the Act of 1876, is that in the case of a blind or deaf child to whom that section applies, the order of the court as to the school which the child shall attend may direct attendance at a school certified by the Board of Education under this Act, although not otherwise a public elementary school,

when the parent does not exercise his right of selecting a school certified under this Act which the child shall attend.

(3.) With regard to the payments to be made by parents towards the expenses incurred by the school authority in respect of blind or deaf children, see sec. 9, *post*.

Provisions as to Religious Instruction.

8.—(1.) If and so far as the school which a child is required in pursuance of this Act to attend is not a public elementary school, it must, in all matters relating to the religious instruction and observances of the child, be conducted in accordance with the rules applying to industrial schools, except that references in the Industrial Schools Act, 1866, and the rules made under it, to the Secretary of State shall be construed as references to the Education Department; and any school authority may provide and maintain for the purposes of this Act a school so conducted. (1)

(2.) Every rule made under this section shall be forthwith laid before both Houses of Parliament.

(3.) In selecting a school under this Act the school authority shall be guided by the rules laid down in the Industrial Schools Act, 1866, and if a child is boarded out in pursuance of this Act, the school authority shall if possible arrange for the boarding out being with a person belonging to the religious persuasion of the child's parent. (2)

(4.) Where a child is required in pursuance of this Act to attend any school, the child shall not be compelled to receive religious instruction contrary to the wishes of the parent, and shall, so far as practicable, have facilities for receiving religious instruction and attending religious service conducted in accordance with the parent's persuasion, which shall be duly registered on the child's admission to the school.

Note 8—(1.) In the case of a public elementary school, the provisions of sec. 7 of the Education Act, 1870, must be strictly complied with.

When the school is not a public elementary school, it must in all matters relating to the religious instruction and observances of the child be conducted in accordance with the rules applying to industrial schools, the Board of Education being deemed to be substituted for the Secretary of State. The following provisions with regard to the religious instruction and observances of children in industrial schools were contained in the model rules formerly issued by the Secretary of State for the management and discipline of those schools. (*See note at foot of p.* 280) :—

"Each day shall be begun and ended with simple family worship, consisting of prayer and praise to God, and the reading of Scripture. The religious instruction shall be governed by the following rule :—

"The ordinary religious instruction and observances shall consist of prayers and hymns and reading from the Bible, with such explanations and instructions in the principles of religion and morality as are suited to the capacity of children; and in the selection of such prayers and hymns, and in explanations and instructions from the Bible, no attempt shall be made to attach children to, or to detach them from, any particular denomination.

"No child shall be required to attend any religious instruction or observance, or shall be taught the catechism or tenets of any religion to which his parents or guardians object, or other than that to which he is stated in the order of detention to belong. With regard to children who are specified in the order of detention as belonging to any particular religious persuasion, the managers shall, so far as practicable, make arrangements that such children shall, during the times set apart for religious instruction, attend religious instruction or observances conducted by ministers of such persuasions or by such responsible teachers of the school or other persons as are delegated by such ministers with the approval of the managers.

"While any religious instruction or observance is going on, none of the scholars or teachers shall be employed in any other manner in the same room.

"On Sunday the inmates shall, if possible, attend public worship at some convenient church or chapel, provided that no boy or girl shall be taken to any church or chapel to which his parents or guardians object on the ground that its religious services are not in accordance with the religious persuasion of the child, or to which he is stated in the order of detention to belong."

(2.) The Industrial Schools Act, 1866, was repealed by the Children Act, 1908. Sec. 66 of the latter Act sets out the rules now laid down as to the selection of a school. These rules provide that in determining on the school to which a child shall be sent the justices shall endeavour to ascertain the religious persuasion to which the child belongs, and shall if possible select a school conducted in accordance with such religious persuasion. If the parent, legal guardian, nearest adult relative or person entitled to the custody of the child sent or about to be sent to a certified school which is not conducted in accordance with the religious persuasion to which the child belongs, objects to the child being sent to or detained in the school specified or about to be specified in the order and names another certified school in Great Britain, which is conducted in accordance with the religious persuasion to which the child belongs, he may apply to have the child sent there, and the justices shall, upon proof of such child's religious persuasion, comply with the request of the applicant; provided that the application is made before the child has been sent to a certified industrial school or within thirty days after his arrival at such a school, and that the applicant shows to the satisfaction of the justices that the managers of the school named by him are willing to receive the child.

It will be observed that under sec. 10 (2) payments under this Act are not to be made on condition of a child attending any certified school other than such as may be reasonably selected by the parent, nor refused because the child does or does not attend any particular certified school.

With regard to children boarded out, see the regulations issued by the Board of Education with respect to the boarding-out of blind and deaf children [Cd. 8505-7917:—p. 41]., as to the undertaking which is to be given by the foster-parent that he will take care that the child shall attend duly at church or chapel according to the religious denomination to which the child belongs, and will make such provision as may be necessary for the escort of the child to and from church or chapel.

Liability of Parent for Expenses of Blind or Deaf Child.

9.—(1.) Where a school authority incur any expense under this Act in respect of any blind or deaf child, the parent of the child shall be liable to contribute towards the expenses

of the child such weekly sum, if any, as, regard being had to the provisions of the Elementary Education Act, 1891, may be agreed on between the school authority and the parent, or, if the parties fail to agree, as may, on the application of either party, be settled by a court of summary jurisdiction, and any sum so agreed on or settled may, without prejudice to any other remedy, be recovered by the school authority summarily as a civil debt. (1)

(2.) It shall be the duty of the school authority to enforce any order made under this section, and any sum received by a school authority under this section may be applied by the school authority in aid of their general expenses. (2)

(3.) A court competent to make an order under this section may at any time revoke or vary any order so made.

Note 9.—(1.) As to the school authority for the purposes of this Act, see sec. 4.

Sec. 15 (1) provides that the term "expenses," when used in relation to a child, includes the expenses of and incidental to the attendance of the child at a school, and of and incidental to the maintenance and boarding-out of a child while so attending, and the expenses of taking the child to and from the school.

For definition of the term "parent," see sec. 3 of the Education Act, 1870. See also *Southwark Union* v. *London County Council* (1910) 2 K. B. 559; 8 L. G. R. 536.

The Elementary Education Act, 1891, was repealed by the Education Act, 1918, and school fees in public elementary schools were abolished by sec. 26 of that Act, but nothing in that Act is to affect the provisions of sec. 9 of this Act. The provisions of the repealed Act may therefore be looked at and may limit the liability of a parent, so that he may not be required to pay any fee that would not have been paid by children attending the school, if the Act of 1891 had remained operative, and fees had continued to be payable.

(2.) With regard to the expenses of a school authority, see sec. 5 (2).

Saving for Rights of Parent.

10.—(1.) The parent of a blind or deaf child shall not, by reason of any payment made under this Act in respect of the child, be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification. (1)

(2.) Payments under this Act shall not be made on condition of a child attending any certified school other than such as may be reasonably selected by the parent, nor refused because the child attends or does not attend any particular certified school. (2)

Note 10.—(1.) This sub-section relieves from the disqualifications referred to, although only a part of the expenses of the maintenance of the child may be recovered from the parent. It is to be remembered that under sec. 9 of the Representation of the People Act, 1918, a person is not disqualified from being registered or from voting as a Parliamentary or Local Government Elector by reason that he or some person for whose maintenance he is responsible has received poor relief or other alms.

(2.) See also sec. 8 (3) as to the rules which are to guide the school authority in the selection of a school to which a child shall be sent.

Period of Education for Blind and Deaf.

11. For the purposes of the Elementary Education Acts, 1870 to 1891, a blind or deaf boy or girl shall be deemed to be a child until the age of sixteen years; and the period of compulsory education shall, in the case of such a child, extend to sixteen years, and the attendance of such a child at school may be enforced as if it were required by bye-laws made under the Elementary Education Acts, 1870 to 1891; and any such child shall not, in pursuance of any such bye-laws, be entitled to total or partial exemption from the obligation to attend school.

Note 11.—The effect of this section is that the requirements in the Elementary Education Acts as to attendance at school apply to blind and deaf children until the age of sixteen years. But in the case of a deaf child under seven years of age, the fact of the child being deaf is, under sec. 1 of this Act, a reasonable excuse for not causing the child to attend school or for failing to provide elementary instruction for the child. Subject to the exception above referred to in the case of a deaf child under seven years of age, any blind, or deaf child under the age of sixteen years is not to be entitled, under bye-laws or otherwise, to total or partial exemption from the obligation to attend school, and the school attendance of the child is to be enforced in like manner as if the attendance of the child at school were required by bye-laws.

As to the requirement of school attendance under bye-laws, see sec. 74 of the Education Act, 1870, and see also the new provisions as to the attendance of children at elementary schools contained in sec. 8 of the Education Act, 1918. The provisions in this Act relating to the attendance of children at school are not affected by the new provisions as to school attendance contained in the Education Act, 1918 (sec. 8 (8) of that Act).

If a child who is attending or is about to attend a public elementary school or a school certified by the Board of Education under the Elementary Education (Blind and Deaf Children) Act, 1893, attains any year of age during the school term, the child shall not, for the purpose of any enactment or bye-law, whether made before or after the passing of this Act, relating to school attendance, be deemed to have attained that year of age until the end of the term (Education Act, 1918, sec. 9).

Grants from Public Money towards Education of Blind and Deaf Children.

12. Nothing in any Act of Parliament shall prevent the Education Department from giving aid from the parliamentary grant to a certified school in respect of education given to blind or deaf children to such amount and on such conditions as may be directed by or in pursuance of the minutes of the Education Department in force for the time being.

Note 12.—The grant payable each year for a Certified School for blind or deaf children is as follows:—

(i.) At the rate of £8 10*s.* for each unit of average attendance in a Certified Day School.

(ii.) At the rate of £16 10*s.* for each unit of average attendance in a Certified Boarding School.

See Grant Regulations No. 7, noted under sec. 44 of the Education Act, 1918, p. 417.

In a memorandum dated March, 1897, the Education Department stated that the following subjects had been accepted by them as proper to be included in the "Course of Manual Instruction or Industrial Training," which may be approved under paragraph (*b*) of the foregoing minute:—Wood-carving, wood-work (carpentry), wood-work (advanced Sloyd), bent iron-work, chair caning, basket making, mat making, gardening, tailoring, mattress making, shoe making, printing, piano tuning, cookery-work (girls), laundry-work (girls), machine-sewing (girls), needlework (girls), if accompanied by dress-cutting, house-work (girls), if accompanied by domestic economy; "suitable occupations" for children over seven, for whom such would be sufficient in an ordinary public elementary school as a class subject; knitting of garments, not confined to cuffs, socks, and stockings, by blind girls, if systematically taught and practised as an industrial occupation, and type-writing. The scholars should be taught these subjects in classes by themselves.*

A modified list of suitable forms of manual instruction is contained on p. 26 of the Regulations of 1st April, 1917. [Cd. 8505.]

Repeal of Powers of Guardians to send Blind or Deaf Children to School.

13.—(1.) As from the first day of July one thousand eight hundred and ninety-four so much of any enactment in force at that date as empowers boards of guardians to send blind or deaf children to school shall be repealed, except as to children who are—

(*a*) idiots or imbeciles; or

(*b*) resident in a workhouse or in an institution to which they have been sent by a board of guardians from a workhouse; or

(*c*) boarded out by guardians.

(2.) . . . .

Note 13.—As to the duty of a school authority in regard to the classes of children mentioned in this section, see sec. 31 of the Mental Deficiency Act, 1913, and sec. 1 of the Elementary Education (Defective and Epileptic Children) Act, 1914. The responsibility for the care of the children of these classes who may require relief devolves on the guardians.

Report to be laid before Parliament.

14. The Education Department shall annually lay before both Houses of Parliament a report of their proceedings under this Act during the preceding year, and in that report shall give lists of the schools to which they have granted and

* With regard to this advice as to the scholars being taught in classes by themselves, it is stated in a note to the memorandum that this rule may be waived as regards deaf scholars in the case of laundry-work, and the drawing and practical part of wood-work; and also in the case of cookery, provided the scholars are previously made familiar in their own school with the names of the chief articles of food, and with the names and uses of the implements employed in the kitchen, and have had practice in actual weighing and measuring, before entering the cookery classes.

refused certificates under this Act during the year, with their reasons for each such refusal.

Note 14.—The particulars required by this section to be annually laid before both Houses of Parliament are included in the annual report of the Board of Education which is presented by them to Parliament.

Interpretation of Terms.

15.—(1.) In this Act—

The expression "blind" means too blind to be able to read the ordinary school books used by children;

The expression "deaf" means too deaf to be taught in a class of hearing children in an elementary school;

The expression "school" includes any institution in which blind or deaf children are boarded or lodged as well as taught, and any establishment for boarding or lodging children taught in a certified school;

The expression "elementary education" may include industrial training whether given in the school which the child attends or not;

The expression "maintenance" includes clothing;

The expression "expenses," when used in relation to a child, includes the expenses of and incidental to the attendance of the child at a school, and of and incidental to the maintenance and boarding-out of the child while so attending, and the expenses of conveying the child to and from the school;

Other expressions have, unless the contrary intention appears, the same meaning as in the Elementary Education Acts, 1870 to 1891.

(2.) For the purposes of this Act a child resident in a school or boarded out in pursuance of this Act shall be deemed to be resident in the district from which the child is sent.

Note 15.—As to what constitutes "residence" in the district from which the child is sent, reference may be made to the note and the cases cited on pp. 302 to 304.

Extent of Act.

16. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

17. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

Short Title.

18. This Act may be cited as the Elementary Education (Blind and Deaf Children) Act, 1893, and shall be read with the Elementary Education Acts, 1870 to 1891.

ELEMENTARY EDUCATION (DEFECTIVE AND EPILEPTIC CHILDREN) ACT, 1899.

(62 & 63 Vict., c. 32.)

An Act to make better Provision for the Elementary Education of Defective and Epileptic Children in England and Wales.

[*9th August*, 1899.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power to School Authority to determine what Children are Defective or Epileptic.

1.—(1.) A school authority, as defined by the Elementary Education (Blind and Deaf Children) Act, 1893, may, with the approval of the Education Department, make such arrangements as they think fit for ascertaining—

(*a*) What children in their district, not being imbecile, and not being merely dull or backward, are defective, that is to say, what children by reason of mental or physical defect are incapable of receiving proper benefit from the instruction in the ordinary public elementary schools, but are not incapable by reason of such defect of receiving benefit from instruction in such special classes or schools as are in this Act mentioned ; and

(*b*) What children in their district are epileptic children, that is to say, what children, not being idiots or imbeciles, are unfit by reason of severe epilepsy to attend the ordinary public elementary schools. (1)

(2.) The school authority, in making their arrangements under this section, shall provide facilities for enabling any parent, who is of opinion that his child ought to be dealt with under this Act, to present such child to the school authority to be examined, although he may not have been required so to do by that authority ; and any school authority failing to provide such facilities shall be deemed to have acted in contravention of this Act. (2)

(3.) For the purpose of ascertaining whether a child is defective or epileptic within the meaning of this section, a certificate to that effect by a duly qualified practitioner

approved by the Education Department shall be required in each case. The certificate shall be in such form as may be prescribed by the Education Department. (3)

[Such duly qualified medical practitioner shall, if so directed by the Local Education Authority, or, if he is so requested by the parent of the child, before giving a certificate under this section, consult the head teacher of the school, if any, which the child has been attending, or such other person as the Local Education Authority may appoint for the purpose, and a copy of any report made by the head teacher or such other person shall be forwarded to the Local Education Authority.]

The paragraph in brackets was interpolated at the end of sub-section (3) by sec. 6 of the Elementary Education (Defective and Epileptic Children) Act, 1914, post, p. 476.

(4.) For the purpose of the exercise of the powers conferred by this section, it shall be the duty of the parent of any child who may be required by the school authority to be examined to cause the child to attend such examination, and any parent who fails to comply with such requirement shall be liable on summary conviction to a fine not exceeding five pounds. (4)

Additional Statutory Provision.

Sec. 20 of the Education Act, 1918, provides that a Local Education Authority shall make arrangements under the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914, for ascertaining what children in their area are physically defective or epileptic within the meaning of those Acts. (5).

Note 1.—(1.) The school authority under this Act are the same as the authority who have the charge of the education of blind and deaf children under sec. 4 of the 56 & 57 Vict., c. 42, *ante*, *i.e.*, the Local Education Authority. A Local Education Authority may delegate to the education committee, with or without any restrictions or conditions as they think fit, any of their powers, except the power of raising a rate or borrowing money.

With regard to the term "children," see sec. 11, which provides that for the purposes of the Elementary Education Acts a defective or epileptic boy or girl shall be deemed to be a child until the age of sixteen years.

The Local Education Authority may, with the approval of the Board of Education, make such arrangements as they think fit for ascertaining what children in their district are defective or epileptic, and in paragraphs (*a*) and (*b*) of this sub-section the classes of children who come within these terms are defined.

As to special classes or schools referred to in para. (*a*), see sec. 2 (1) and sec. 14.

The minute of the Committee of Council on Education, dated 26th of February, 1900, stated as follows:—"Day schools or classes for defective children are public elementary schools or classes attached to public elementary schools, differing only from ordinary public elementary schools in the special conditions hereinafter required and the special grants made for them. In other respects they are subject to the ordinary requirements of the Day School Code.

Schools or classes for defective children are called 'special' schools or classes."

Any arrangements which a Local Education Authority may from time to time propose for the purpose referred to above should be submitted to the Board of Education before any further action is taken. The Local Education Authority should also previously inform the Board of Education of the names of any medical officers whom they may propose to appoint under sub-secs. 3 and 4 of this section.

The Board of Education stated that the arrangements for ascertaining what children are defective or epileptic should, if possible, include the production of particulars as to the family history of the child, and as to the habits, capacity, and attainments of the child as observed by the teacher of the school which it may have attended. The examination should be confined to children who are not less than seven years old, and it should be held by the medical officer of the school authority. The teacher who has had charge of the child should be present, and the opportunity of being present should be given to the parent of the child, and to H.M. Inspector, and, in the case of a defective child, to the teacher of the special class in the neighbourhood. The examination should be applied, not only to children who have been attending infants' schools, but to children who have been absent altogether from school by reason of mental or physical defect. It will be observed that, by sec. 1 (4) of the Act, a parent is bound to cause his child to attend such examination, if required by the school authority, under a penalty of £5.

(2.) Whatever arrangements may be made by a Local Education Authority with regard to ascertaining what children in their district are efective or epileptic, it appears to be incumbent on them to provided the facilities referred to in this sub-section.

For definition of the term "parent," see sec. 3 of the Education Act, 1870, that definition being made applicable by the second paragraph of sec. 14 of this Act and sec. 15 of the Elementary Education (Blind and Deaf Children) Act, 1893, *ante*.

(3.) The forms of certificate prescribed by the Board of Education for the purposes of this sub-section are as follows :—

(*a*) *For Defective Children.*—I., A.B., a duly qualified practitioner, approved by the Board of Education, certify that Y.Z., not being imbecile and not being merely dull or backward, is, by reason of (1) mental or (2) physical defect, incapable of receiving proper benefit from the instruction in an ordinary public elementary school, but is not incapable, by reason of such defect, of receiving benefit from instruction in a certified special class or school.

(*b*) *For Epileptic Children.*—I., A.B., a duly qualified practitioner, approved by the Board of Education, certify that Y.Z., not being idiot or imbecile, is unfit, by reason of severe epilepsy, to attend an ordinary public elementary school.

In the case of each certificate, in addition to the signature and date, the residence and qualifications as medical practitioner are to be appended.

By sec. 6 of the Education (Administrative Provisions) Act, 1909, in any proceedings by a Local Education Authority the production of a duly signed certificate under sub-sec. (3) is sufficient evidence of the facts therein stated unless the parent or guardian of the child referred to in the certificate requires the medical practitioner to be called as a witness but the parent or guardian may give evidence that the certificate is incorrect : see the note to that section on p. 339.

(NOTE.—The causes which render an epileptic child unfit to attend an ordinary school may be either that serious danger to itself or to

other children, or that serious disturbance to the work of the school, would be caused by such attendance.)

(4.) For definition of term "parent," see the note to sub-sec. (2).

(5.) Physically defective and epileptic children are to be dealt with under the Elementary Education (Defective and Epileptic Children) Act, 1914, like mentally defective children: see sec. 20, Education Act, 1918, p. 382.

Power to provide for Education of Defective and Epileptic Children.

2.—(1.) Where a school authority have ascertained that there are in their district defective children, they may [and in the case of mentally defective children whose age exceeds seven years shall] make provision for the education of such children by all or any of the following means:—

(*a*) by classes in public elementary schools certified by the Education Department as special classes; or

(*b*) by boarding out, subject to the regulations of the Education Department, any such child in a house conveniently near to a certified special class or school; or

(*c*) by establishing schools, certified by the Education Department, for defective children. (1)

(2.) Where a school authority have ascertained that there are in their district epileptic children, they may make provision for the education of such children by establishing schools, certified by the Education Department, for epileptic children. (2)

(3.) The power conferred by this section shall include power to establish or acquire and to maintain certified schools, and to contribute, on such terms and to such extent as may be approved by the Education Department, towards the establishment, enlargement, or alteration, and towards the maintenance of certified schools. (3)

(4.) A school authority may in respect of children resident in or whose permanent home is in their district and attending certified special classes or schools in the district of another school authority, contribute to that other authority the proportionate cost of the provision and maintenance of such special classes or schools. (4)

(5.) The school authority, acting under this section, shall make provision for the examination from time to time of any child dealt with under this section, in order to ascertain whether such child has attained such a mental and physical condition as to be fit to attend the ordinary classes of public elementary schools; and the school authority shall make provision for such examination in the case of any child whose parent claims such examination of his child, provided that the parent shall not make such claim within less than six months after his child has been examined; and any school

authority failing to make much provision as this sub-section requires shall be deemed to have acted in contravention of this Act. (5)

(6.) . . . .

Note 2.—As to the school authority under this Act, see the note to sec. 1.

(1) Sec. 31 (1) of the Mental Deficiency Act, 1913, makes it the duty of a Local Education Authority to make arrangements, subject to the approval of the Board of Education, for ascertaining what children within their area are defective children within the meaning of that Act, see p. 470. The classes of persons who are to be deemed to be defectives within the meaning of that Act are idiots, imbeciles, feeble-minded persons and moral imbeciles.

The words in brackets were added by sec. 1 (1) of the Elementary Education (Defective and Epileptic Children) Act, 1914. The effect of the latter Act was to convert into a duty the power given by the Act of 1899 to Local Education Authorities of providing subject to certain limitations specified in section 1 (p. 473), instruction for mentally defective children capable of receiving some amount of education.

With regard to the means specified by which provision may be made, the Board of Education in their circular letter on the subject of the Act, stated as follows :—

"The chief method contemplated by the Act for providing for defective children is by means of a day school or class which a child may reach from its own home, with the help, if necessary, of a guide or conveyance. The school authority which makes this provision within reach of a child's home may compel the parent to send the child to such a school (sec. 4 (1)). These classes or schools are termed 'classes' or 'schools' according as they are attached to ordinary public elementary schools, or are independent of them. They will be public elementary classes or schools subject to special conditions as to curriculum and as to grant."

See also sec. 21 of the Education Act, 1918, p. 383.

Regulations made by the Board of Education for special schools and classes for blind, deaf, defective and epileptic children, were issued on the 20th March, 1917, and were amended by subsequent minutes of the Board.

Regulations as to boarding out blind, deaf and defective children were also issued on the 20th March, 1917 [Cd. 8505].

Building rules for schools for blind, deaf, defective and epileptic children will be found on p. 27 of the Regulations mentioned above.

(2.) With regard to this provision as to epileptic children, the Board of Education, in their circular letter on the subject of the Act, stated as follows :—"The schools which will be certified by the Department under this Act for epileptic children will be small boarding schools, where proper provision is made for the medical attendance as well as the education of such children. A child who suffers from only mild epilepsy can attend an ordinary school, or, if he happens to be also defective, a special class for defective children. It is only the children whose epilepsy is so severe as to prevent them from attending day schools for whom this Act makes special provision. A school authority may either itself establish certified schools for epileptic children, or may contribute, on terms approved by the Board of Education, to such schools."

(3.) By sec. 6 it is enacted that the provisions of sec. 5 of the Elementary Education (Blind and Deaf Children) Act, 1893, relating to

the powers of a school authority under that Act, shall apply, with the necessary modifications, to school authorities under this Act: see notes on that section. The Local Education Authority may, therefore, for the performance of their duties under this Act exercise the like powers for the provision of school accommodation, and, with the consent of the Minister of Health, they may exercise powers of borrowing.

(4.) The Board of Education with reference to this provision stated as follows in their circular letter on the subject of the Act :—"The Act being permissive as regards the provision to be made by the school authorities, it has been necessary to provide against the possible case of an influx of defective or epileptic children from districts which do not make provision for them into districts which do. Accordingly where children wish to attend a special class or school situated in a district in which they are not resident, or in which they have not their permanent home, the school authority of such a district are under no obligation to admit them, unless the school authority of the district from which the children come are willing to contribute an agreed sum towards the cost of the special class or school."

See also secs. 9 and 10 of the Act, which contain provisions of a like character to meet the case of children for whom the boards of guardians are responsible, and who are sent to special classes or schools.

(5.) The conditions which the Board of Education require to be fulfilled by schools or classes that are certified as special schools or classes for defective children include provisions to the effect of this sub-section. It is further provided, *inter alia*, that the children shall from time to time be inspected by a medical officer appointed for the purpose by the school authority, and that records of such inspection shall be kept. The decision of the Board of Education as to whether a child may be retained in a special school or class as defective is final.

Provision of Guides or Conveyances.

3. A school authority may provide guides or conveyances for children who, in the opinion of the school authority, are by reason of any physical or mental defect, unable to attend school without guides or conveyances.

Note 3.—The Board of Education stated that this provision "is not limited to children attending special classes, but is intended also to meet the case of children who would otherwise be prevented by some physical defect from attending ordinary public elementary schools." See also the provision on p. 383.

As to the liability of the school authority for accidents to children caused by the negligence of the driver of a conveyance provided by the authority, see *Shrimpton* v. *Hertfordshire County Council*, 104 L. T. 145 ; 9 L. G. R. 397 ; noted on p. 207.

Obligation of Parent as to Defective and Epileptic Children.

4.—(1.) The duty of a parent under section four of the Elementary Education Act, 1876, to provide elementary instruction for his child shall, in the case of a defective or epileptic child over seven years of age in any place where a certified special class or school is within reach of the child's

residence, include the duty to cause the child to attend such class or school, and a parent shall not be excused from this duty by reason only that a guide or conveyance for the child is necessary. (1)

(2.) In the case of an epileptic child whose age exceeds seven years, the school authority may, if they think fit, apply to a court of summary jurisdiction for an order requiring the child to be sent to a certified school for epileptics, and if any parent fails to comply with the order, he shall be deemed to have failed to perform the duty prescribed by section four of the Elementary Education Act, 1876, and may be proceeded against accordingly. (2)

Note 4.—(1.) As to the school authority for the purposes of this Act, see note to sec. 1.

Sec. 4 of the Elementary Education Act, 1876, *ante*, is as follows :—"It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act." The duty under sec. 4 of the Act of 1876, it will be observed, will not arise, in the case of a defective, etc., child over 7, unless there is a certified special class or school within reach of the child's residence.

For definition of the term "parent," see note on sec. 1 (2).

The defective and epileptic children to whom this section applies are children over seven and under sixteen years of age : see sec. 11.

As to the provision of guides and conveyances, see sec. 3 above.

It is presumed that, on default on the part of the parent, the proceeding may be by complaint under sec. 11 of the Elementary Education Act, 1876 (p. 85), after due warning to the parent.

By sec. 5 it is enacted that the provisions of sec. 7 of the Elementary Education (Blind and Deaf Children) Act, 1893, *ante*, respecting the effect of the grant of certificates, shall apply with the necessary modifications to schools for defective and epileptic children established under this Act ; and consequently every such school which has been certified is to be deemed to be a certified efficient school within the meaning of the Elementary Education Act, 1876, and for the purpose of sec. 11 of that Act may, in the case of a defective or epileptic child, be treated as if it were a public elementary school.

See also sec. 11 as to application and enforcement of bye-laws in these cases.

(2.) This sub-section only applies to epileptic children between the ages of seven and sixteen years. In so far as it made the Elementary Education Act, 1876, applicable to enable a child to be sent to a certified school, the sub-section must be read with sec. 5 of the Elementary Education (Defective and Epileptic Children) Act, 1914. Under the latter section the Local Education Authority may require the parent to send the child to a certified class or school suitable for the child, and, if he fails without reasonable excuse to do so, may by complaint apply to a court of summary jurisdiction for an order requiring the child to be sent to a certified class or school suitable for the child and willing to receive him, being either such as the parent may select, or, if he does not select a suitable class or school, then such class or school as the court thinks expedient. . . . (see sec. 5, and its provisoes, on p. 475).

As to sec. 4 of the Elementary Education Act, 1876, see the note, above, on the preceding sub-section.

Conditions and Effect of Grant of Certificate to School for Defective or Epileptic Children.

5. The provisions of section seven of the Elementary Education (Blind and Deaf Children) Act, 1893, respecting the conditions and effect of the grant of certificates to schools for blind or deaf children shall apply, with the necessary modifications to schools for defective or epileptic children established or proposed to be established under this Act, except that no requirement need be made as to the proportion of the expenses to be defrayed out of private sources.

Note 5.—See sec. 7 of the Elementary Education (Blind and Deaf Children) Act, 1893 (p. 449,) and notes thereon.

Powers and Expenses of School Authority. 56 & 57 *Vict., c.* 42.

6. The provisions of section five of the Elementary Education (Blind and Deaf Children) Act, 1893 (relating to the powers and expenses of a school authority under that Act), shall apply, with the necessary modifications, to school authorities acting under this Act. . . .

Note 6.—As to the school authority for the purposes of this Act, see note on sec. 1.

See sec. 5 of the Elementary Education (Blind and Deaf Children) Act, 1893, p. 448; also Sch. II. (7), of the Education Act, 1902.

Grants from Public Money towards Education of Defective and Epileptic Children.

7. Nothing in any Act of Parliament shall prevent the Education Department from giving aid from the parliamentary grant to a school in respect of education given to defective or epileptic children to such amount and on such conditions as may be directed by or in pursuance of the minutes of the Education Department in force for the time being.

Note 7.—The grants payable on account of the education of defective and epileptic children are set out in Grant Regulations No. 7, noted under sec. 44 of the Education Act, 1918, p. 417.

Contribution by Parent.

8.—(1.) The parent of a defective or epileptic child shall be liable to contribute towards the expenses of the child incurred by a school authority under this Act in like manner and to the like extent as the parent of a blind or deaf child is liable to contribute under section nine of the Elementary Education (Blind and Deaf Children) Act, 1893, and the provisions of that section shall apply accordingly. (1)

(2.) The parent of a defective or epileptic child shall not,

by reason of any payment made under this Act in respect of the child, be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification. (2)

(3.) Payments under this Act shall not be made on condition of a child attending any certified school other than such as may be reasonably selected by the parent, nor refused because the child attends or does not attend any particular certified school.

Note 8.—(1.) See sec. 9 of the Act referred to, 56 & 57 Vict., c. 42, *ante*, and notes thereon. The provisions of this section are not affected by the abolition of fees brought about by the Education Act, 1918, see sec. 26 (3) of that Act, on p. 386.

As regards the definition of the term "expenses" in that Act, see sec. 14 of this Act (pp. 456 and 467).

(2.) This provision will relieve from the disqualifications referred to although only a part of the maintenance of the child may be recovered from the parent. But see note (1) to sec. 10 of the Elementary Education (Blind, &c., Children) Act, 1893, on p. 453.

Contribution by Guardians of the Poor.

9. The board of guardians of any poor law union may contribute such of the expenses of providing, enlarging, or mantaining any certified special class or school under this Act as are certified by the Education Department to have been incurred wholly or partly in respect of scholars taught at the class or school who are either resident in a workhouse or in an institution to which they have been sent by the guardians from a workhouse or boarded out by the guardians.

Note 9.—See also sec. 10 as to contributions by guardians towards the expenses of the education and maintenance of defective and epileptic children who are resident in a workhouse, or in any institution to which they have been sent by the guardians from a workhouse, or boarded out by the guardians.

Limitation on Liability of School Authority.

10. Nothing in this Act shall be construed as imposing a duty on a school authority to receive in a special class or school established by them any child—

(*a*) who is resident in, or whose permanent home in their opinion is in, the district of another school authority; or

(*b*) who is resident in a workhouse, or in any institution to which he has been sent by the guardians, from a workhouse, or boarded out by the guardians,

unless that other school authority or, as the case may be, the guardians are willing to contribute towards the expenses of the education and maintenance of the child such sum as may be agreed on between the authorities concerned.

Note 10.—As to the school authority for the purposes of this Act, see note on sec. 1.

Period of Education for Defective and Epileptic Children.

11. For the purposes of the Elementary Education Acts, 1870 to 1893, and of this Act, a defective or epileptic boy or girl shall be deemed to be a child until the age of sixteen years, and the period of compulsory education shall, in the case of such a child, extend to sixteen years, and the attendance of such a child at school may be enforced as if it were required by bye-laws made under the Elementary Education Acts, 1870 to 1893, and any such child shall not, in accordance with such bye-laws, be entitled to total or partial exemption from the obligation to attend school.

Note 11.—The effect of this section is that the requirements of the Elementary Education Acts as to attendance at school apply to defective and epileptic children until the age of sixteen years. But under sec. 4 (1) the duty of a parent under sec. 4 of the Elementary Education Act, 1876, to provide elementary instruction for his child, in the case of a defective or epileptic child, does not arise until the child is over seven years of age. The provisions in this Act relating to the attendance of children at school are not affected by the new provisions as to school attendance contained in the Education Act, 1918 (see sec. 8 (8), of that Act).

By sec. 9 of the Education Act, 1918, if the child attains any year of age during the school term the child shall not, for the purpose of any enactment or bye-law, be deemed to have attained that year of age until the end of the term.

In the case of *Rennie* v. *Boardman*, 111 L.T. 713; 12 L.G.R. 1093, the education authority of the county borough of O. obtained an order against the parent of a defective child requiring him to send the child to a specified school until it attained the age of sixteen years. The parent disobeyed the order and sent the child, at the age of fourteen, to work in a mill. Upon an information being preferred against the parent for non-compliance with the order, it was urged on his behalf: (1) that there was nothing in the order to show that the child had been found to be defective in intellect; (2) that the child had regularly attended school, as required by the Education Acts, until it had attained the age of fourteen years; (3) that the child was living apart from its parent and outside the jurisdiction of the court; and (4) that the offence was of so trifling a nature that the parent ought not to be convicted. The justices were of opinion that the contentions of the parent were well founded and dismissed the information. Held, that the order for attendance at school need not show upon the face of it the evidence upon which it had been made; that, as the order had been regularly made, the only question which the justices had to decide was whether the order had or had not been obeyed; and that, since there had been a wilful disobedience of the order, the justices were not entitled to treat it as a trivial offence of such a character as to dismiss it under sec. 1 of the Probation of Offenders Act, 1907.

As to provisions with regard to bye-laws, see sec. 74 of the Education Act, 1870.

Religious Instruction.

12. The provisions regulating religious instruction in certified schools for defective and epileptic children shall

be the same as those enacted by section eight of the Elementary Education (Blind and Deaf Children) Act, 1893.

Note 12.—See sec. 8 of the Act referred to, *ante*, p. 451.

Report to Parliament.

13. Every school authority shall make to the Education Department such returns as the Department may require; and the Department shall annually lay before both Houses of Parliament a report of their proceedings under this Act during the preceding year, and in that report shall give lists of the schools and classes to which they have granted or refused certificates under this Act during the year, with their reasons for each such refusal.

Note 13.—The particulars required by this section to be anually laid before both Houses of Parliament are included in the annual report of the Department, which is presented to Parliament.

Interpretation of Terms.

14. In this Act.—

The expression "school" includes any institution in which defective or epileptic children are boarded or lodged as well as taught, and any establishment for boarding or lodging children taught in a certified special class or school:

Other expressions have, unless the contrary intention appears, the same meaning as in the Elementary Education (Blind and Deaf Children) Act, 1893.

Note 14.—For definition of terms in the Act referred to, see sec. 15 of that Act, p. 456.

Short Title.

15. This Act may be cited as the Elementary Education (Defective and Epileptic Children) Act, 1899, and may be cited with the Elementary Education Acts, 1870 to 1893.

MENTAL DEFICIENCY ACT, 1913.

(3 & 4 Geo. V., c. 28.)

An Act to make further and better provision for the care of Feeble-minded and other Mentally Defective Persons and to amend the Lunacy Acts.

[15*th August*, 1913.]

. . . . . .

PART I.

Power and Manner of dealing with Defectives.

Powers of dealing with Defectives.

1. The following classes of persons who are mentally defective shall be deemed to be defectives within the meaning of this Act :—

(*a*) Idiots ; that is to say, persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers ;

(*b*) Imbeciles ; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, of being taught to do so ;

(*c*) Feeble-minded persons ; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protection or for the protection of others, or, in the case of children, that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools ;

(*d*) Moral imbeciles ; that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect.

Note 1.—The definitions of the classes of defectives given in the section are based on, but do not precisely follow, recommendations made by the Royal College of Physicians to the Royal Commission on the Care of the Feeble-Minded and accepted by them; see page 186 of their report, issued in 1908.

Formerly persons suffering from "mental defect," were roughly classified into "lunatics," and "idiots." The word "lunatic" implied insanity, or disorder of the mind, in a person who had been in possession of his faculties; the word "idiot" indicated a state of fatuity or mental incapacity which was evident at birth or at an early age: "an idiot was a person who never had a mind; a lunatic, a person who had had a mind and lost it."

The passing of the Idiots Act in 1866 marked a change both in nomenclature and administration. The Act (now repealed) dealt with idiots as apart from lunatics; and by the use of the word "imbeciles" a yet further sub-class of the mentally defective was recognised by statute as indicating a lesser degree of defect than that of idiocy. Owing in part to a widespread desire for the more specialised treatment of cases of lesser mental defect, and more particularly for the better protection of girls and young women, who were deficient in mind and self-control, the word "feeble-minded" came into use as indicating a yet minor degree of defect than that implied by the words "idiot" or "imbecile." (F.-M. Report, p. 155.)

2.—(2.) Notice shall, subject to regulations made by the Board of Education, to be laid before Parliament as hereinafter provided (1), be given by the Local Education Authority to the local authority under this Act in the case of all defective children over the age of seven—

(*a*) who have been ascertained to be incapable by reason of mental defect of receiving benefit or further benefit in special schools or classes (2), or who cannot be instructed in a special school or class without detriment to the interests of the other children, or as respects whom the Board of Education certify that there are special circumstances which render it desirable that they should be dealt with under this Act by way of supervision or guardianship;

(*b*) who on or before attaining the age of sixteen are about to be withdrawn or discharged from a special school or class (2), and in whose case the Local Education Authority are of opinion that it would be to their benefit that they should be sent to an institution or placed under guardianship.

Note 2.—(1.) See sec. 68 of this Act, below.

(2.) Regulations of the Board of Education as to special schools and classes were issued on the 20th March, 1917 [Cd. 8505].

As to provision for the education of mentally defective children who can be instructed in special schools or classes, see sec. 1 of the Elementary Education (Defective and Epileptic Children) Act, 1914, below.

. . . . . .

30.—(iv.) nothing in this Act shall affect the duties or powers of Local Education Authorities under the Education Acts; and the duty of ascertaining what children over the age of seven and under the age of sixteen (hereinafter referred to as defective children) are defectives shall rest with the Local Education Authority as hereinafter provided (3) and not with the local authority under this Act; and such last mentioned authorities shall have no duties as respects defective children, except those whose names and addresses have been notified to them by the Local Education Authority under the provisions of this Act.

Note 30. (3.) See sec. 31 of this Act, below.

Duties of Local Education Authorities.

31.—(1.) The duties of a Local Education Authority shall include a duty to make arrangements, subject to the approval of the Board of Education,—

(*a*) for ascertaining what children within their area are defective children within the meaning of this Act;

(*b*) for ascertaining which of such children are incapable by reason of mental defect of receiving benefit or further benefit from instruction in special schools or classes;

(*c*) for notifying to the local authority under this Act the names and addresses of defective children with respect to whom it is the duty of the Local Education Authority to give notice under the provisions hereinbefore contained.

In case of doubt as to whether a child is or is not capable of receiving such benefit as aforesaid, or whether the retention of a child in a special school or class would be detrimental to the interests of the other children, the matter shall be determined by the Board of Education.

(2.) The provisions of section one of the Elementary Education (Defective and Epileptic Children) Act, 1899 (3), shall apply with the necessary modifications for the purposes of this section.

Note 31.—(1.) As to the duty of the Local Education Authority to give notices to the local authority, see sec. 2 (2) of this Act, above.

In case of doubt as to whether or not a child is mentally defective within the meaning of the Act of 1899, the matter is to be decided by the Board of Education (sec. 1 (3) of the Education (Defective and Epileptic Children) Act, 1914).

(2.) See sec. 1 (3) and (4) of the Elementary Education (Defective and Epileptic Children Act), 1899, p. 457. For the purpose of ascertaining whether a child is defective within the meaning of that Act, a certificate to that effect by a duly qualified medical practitioner approved by the Board of Education, is required in each

case. The certificate must be in the form prescribed by that Board.

The local authority for the purposes of the Mental Deficiency Act are, as respects a County, the Council of the County, and, as respects a county borough the council of the borough (Mental Deficiency Act, 1913, sec. 27).

Provisions as to Regulations.

68. Regulations made under this Act shall be laid before Parliament as soon as may be after they are made, and, if within thirty sitting days after they have been so laid either House of Parliament presents an address to His Majesty praying that any such regulations may be annulled, His Majesty may, by Order in Council, annul the regulations, without prejudice, however, to anything done thereunder, and the regulations made under this Act shall have effect as if enacted in this Act.

Note 68.—As to the force of regulations which are to have effect "as if enacted in this Act," see *Institute of Patent Agents* v. *Lockwood*, 1894, A.C. 347, cited on p. 202.

ELEMENTARY EDUCATION (DEFECTIVE AND EPILEPTIC CHILDREN) ACT, 1914.

(4 & 5 Geo. V., c. 45.)

By Section 20 of the Education Act, 1918, this Act is extended so as to apply to physically defective and epileptic children, and the Act is to have effect as if references therein to mentally defective children included references to physically defective and epileptic children (p. 382).

An Act to amend the Law relating to the Education of Defective and Epileptic Children in England and Wales.

[10*th August*, 1914.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Duty to provide for Education of Mentally Defective Children.

1.—(1.) It shall be the duty of the Local Education Authority for the purposes of the Elementary Education (Defective and Epileptic Children) Act, 1899 (herein called the principal Act) to make suitable provision, either alone or in conjunction with other Local Education Authorities, for the Education of Children belonging to their area whose age exceeds seven years and who are ascertained to be mentally defective [physically defective or epileptic] (1) within the meaning of the principal Act, and accordingly after the words "they may" in sub-section (1) of section two of the principal Act there shall be inserted the words "and in the case of mentally defective (1) children whose age exceeds seven years shall" : (2)

Provided that the duty of a Local Education Authority under this Act shall not include—

(i.) A duty to make provision for boarding and lodging a mentally defective [physically defective or epileptic] child (1) unless the Board of Education are satisfied, after considering the report of a duly qualified

medical practitioner approved by the Board under section one of the principal Act, and after consultation with the Local Education Authority, that suitable provision for the child's education cannot be made in in any other way, and unless the grants payable out of moneys provided by Parliament in respect of a mentally defective [physically defective or epileptic] (1) child, so boarded and lodged, amount to not less than one-half of the cost of conveying such child to and from any school so provided, and of educating, boarding, and lodging and medically attending and treating that child (including, in the case of a school provided by a Local Education Authority, expenditure out of income by the authority by way of interest on or repayment of capital raised, or by way of rent or other similar payment, for the purposes of the provision of the school); or

(ii.) A duty to establish a certified school for boarding and lodging mentally defective [physically defective or epileptic] (1) children, unless the Board of Education are satisfied, after considering the reports of such medical practitioners, and after such consultation as aforesaid, that there are not less than forty-five such children belonging to the area for whose education suitable provision cannot be made in any other way.

(2.) Sub-section (6) of section two of the principal Act and the Elementary Education Amendment Act, 1903, are hereby repealed.

(3.) In case of doubt as to whether a child is or is not mentally defective [physically defective or epileptic] (1) within the meaning of the principal Act, the matter shall be determined by the Board of Education.

Note 1.—(1.) Section 20 of the Education Act, 1918, provides as follows:—

"A Local Education Authority shall make arrangements under the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914, for ascertaining what children in their area are physically defective or epileptic within the meaning of those Acts, and the provisions of the Elementary Education (Defective and Epileptic Children) Act, 1914, relating to mentally defective children, shall be extended so as to apply to physically defective and epileptic children, and accordingly that Act shall have effect as if references therein to mentally defective children included references to physically defective and epileptic children.

As to the steps to be taken by the Local Education Authority as regards mentally defective children who cannot be instructed in special schools or classes, see sec. 31 and sec. 2 of the Mental Deficiency Act, 1913, pp. 470 and 469.

As to boarding and lodging mentally defective, physically defective and epileptic children see sec. 2 of the Elementary Education (Defec-

tive and Epileptic Children) Act, 1899, sec. 21 of the Education Act, 1918, and the Regulations of the Board of Education referred to in the note to sec. 2 to the Act of 1899, on p. 461 above.

(2.) This Act as amended converts into a duty the power, given by the Act of 1899, enabling Local Education Authorities to provide instruction for mentally defective, physically defective and epileptic children, subject, however, to the exceptions in the provision to sec. 1 above.

Discontinuance of Certified School.

2. In the event of a Local Education Authority proving to the satisfaction of the Board of Education that the average attendance of mentally defective [physically defective or epileptic] children at a certified class or school provided by such authority has, during the previous three years, been less then fifteen, it shall be lawful for such authority to discontinue the maintenance thereof, and thereupon the authority shall make such alternative provision for the mentally defective [physically defective or epileptic] children belonging to their area as the Board of Education, after consultation with such authority, may approve.

Note 2.—The provision made by local authorities for mentally defective children is briefly summarised on p. 102 of the annual report for 1917 of the Chief Medical Officer of the Board of Education. The number of these schools was 177, and the number of schools provided by voluntary bodies was sixteen. The number of educable mentally deficient children was estimated at upwards of 30,000. School accommodation had been provided for 15,249.

Consultation of Parents and Co-operation with other Authorities and Persons.

3.—(1.) A Local Education Authority, before deciding what provision shall be made for the education of a mentally defective [physically defective or epileptic] child, shall endeavour to ascertain the wishes of the parents of the child and shall, so far as possible, give effect to their wishes.

(2.) A Local Education Authority, in the exercise and performance of their powers and duties under the principal Act and this Act, shall have regard to the existing supply of certified schools and classes, and shall, so far as possible, co-operate with other authorities or persons providing or having power to provide certified schools and classes.

Note 3.—The report mentioned in the note to sec. 2 makes many valuable suggestions as to the educational requirements of feeble-minded children: see p. 105 of the report which is published by His Majesty's Stationery Office, London, W.C. 2, price 1s.

Delegation of Authority to the Council of a County.

4. The council of a non-county borough or urban district having powers and duties under the principal Act and this Act

may, at any time after the passing of this Act, by agreement with the council of the county in which the borough or urban district is situate, and with the approval of the Board of Education, relinquish in favour of that council any of those powers or duties, and in that case the powers or duties of the authority so relinquished shall cease, and the area of the authority shall, as respects those powers or duties, be part of the area of the county council.

Enforcement of Obligations of Parents of Mentally Defective and Epileptic Children.

5.—(1.) If a Local Education Authority are satisfied, after consultation with the parent of a mentally defective [physically defective] or epileptic child over seven years of age, that the parent is not making suitable provision for the child's education, they may require the parent of the child to send the child to a certified class or school suitable for the child, and, if he fails without reasonable excuse to do so, may by complaint apply to a court of summary jurisdiction for an order requiring the child to be sent to a certified class or school suitable for the child and willing to receive him, being either such as the parent may select, or, if he does not select a suitable class or school, then such class or school as the court thinks expedient, and such an order shall be a sufficient authority for the conveyance of the child to the class or school named in the order:

Provided that no order shall be made requiring the child to be sent to a certified class or school which is not within reach of the child's residence or to a boarding school without the consent in writing of the parent, unless it is proved to the satisfaction of the court that such consent is unreasonably withheld, or that the parent cannot be found, but consent shall not be deemed to be unreasonably withheld if withheld with the bonâ fide intention of benefiting the child:

Provided further that if the court shall refuse to make an order the court, unless for good cause it shall otherwise order, shall award costs to the parent, and the costs so awarded shall, unless some reason to the contrary appears, include such sum as compensation for the expense, trouble, and loss of time incurred in or incidental to his attendance at the court as to the court may seem just and reasonable.

(2.) The provisions of this section shall be in substitution for, and not in addition to, the power of a court of summary jurisdiction, on an attendance order not being complied with, to order the child to be sent to an industrial school under section twelve of the Elementary Education Act, 1876, as applied by the principal Act.

(3.) Nothing in this section shall be construed as affecting the power of a parent to withdraw a child from school on proof

to the satisfaction of the Local Education Authority that he will make suitable provision for the child's education in some other way.

Note 5.—See the note (2) to sec. 4 of the Act of 1899, p. 463.

Certification of Children.

6. Section one of the principal Act shall be construed and have effect as if the following words were added at the end of sub-section (3) of that section :—

" Such duly qualified medical practitioner shall, if so directed by the Local Education Authority, or, if he is so requested by the parent of the child, before giving a certificate under this section, consult the head teacher of the school, if any, which the child has been attending, or such other person as the Local Education Authority may appoint for the purpose, and a copy of any report made by the head teacher or such other person shall be forwarded to the Local Education Authority."

Return of Certificate.

7. When a child is discharged from a special school or class on the ground that he is no longer mentally defective [physically defective or epileptic] the Local Education Authority shall return to the parent of the child any certificate certifying that the child was mentally defective [physically defective or epileptic], and such certificate shall not be received in evidence in any legal proceedings without the consent of the child or its parent.

Note 7.—See note to sec. 1 above as to the words in brackets.

Determination of Residence.

8.—(1.) For the purposes of the principal Act and this Act a child shall be deemed to belong to the area in which the residence or permanent home of the child is for the time being situate :

Provided that, in the case of a child in a school or boarded out in pursuance of the principal Act or this Act, the Local Education Authority who are making provision for his education shall continue liable to make such provision pending the determination of any question which may be referred to the Board of Education under this section.

(2.) If any question arises as to the area to which a child is to be deemed to belong, that question shall be determined by the Board of Education, and the Board on determining the question may direct such financial adjustments between the

Local Education Authorities concerned as they may consider just.

Note 8.—The question what is the residence or permanent home of a child is one of fact to be determined by the Board of Education on the evidence which is placed before it. Provided that there is some evidence to support the decision arrived at by the Board in any particular case, the decision of the Board cannot be questioned in a court of law. See the note and the cases cited on pp. 303-4.

Short Title and Commencement.

9.—(1.) This Act may be cited as the Elementary Education (Defective and Epileptic Children) Act, 1914, and shall be construed with the principal Act, and that Act and this Act may be cited together as the Elementary Education (Defective and Epileptic Children) Acts, 1899 to 1914; and the Education Acts, 1870 to 1911, the Education (Choice of Employment) Act, 1910, and this Act may be cited together as the Education Acts, 1870 to 1914.

(2.) This Act shall come into operation on the first day of January nineteen hundred and fifteen.

Note 9.—See the note to sec. 52 of the Education Act, 1918, as to the construction of one Act with another or others, p. 437.

APPENDIX B.

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THE ELEMENTARY SCHOOL TEACHERS (SUPERANNUATION) ACT, 1898.

(61 & 62 Vict., c. 57.)

An act to provide for Superannuation and other Annuities and Allowances to Elementary School Teachers Certificated by the Education Department.

[*12th August*, 1898.*]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Elementary School Teachers Certified after Commencement of the Act.

1.—(1.) A teacher certificated after the commencement of this Act shall not be recognised by the Education Department as a certificated teacher until the Department are satisfied in the prescribed manner of his physical capacity. (1)

(2.) In the case of a teacher who becomes a certificated teacher after the commencement of this Act, the following provisions shall, subject to rules under this Act, apply :—

(*a*) His certificate shall expire on his attaining the age of

*This Act came into operation on the 1st April, 1899.

sixty-five years, or if the Education Department, on account of his special fitness, allow his service to continue for a further limited time, then on the expiration of that limited time ; (2)

(*b*) The teacher shall, while serving in recorded service, contribute *to the deferred annuity fund* under this Act at the rate, if a man, of *three pounds*, and if a woman, of *two pounds*, a year . . . . . ; (3)

(*c*) On his attaining the age of sixty-five years, or on any later date at which his certificate expires, he shall be entitled, *out of the deferred annuity fund*, to such annuity for the remainder of his life in respect of his contributions to that fund as may be fixed by the tables under this Act, but he shall not be entitled to any return of contributions or to any benefits in respect of his contributions other than that annuity ; (4)

(*d*) On his attaining the age of sixty-five years, or on any later date at which his certificate expires, if he has contributed to the deferred annunity fund in accordance with this Act, and his years of recorded service are not less than half the number of years which have elapsed since he became certificated, the Treasury may grant to him, out of moneys provided by Parliament, an annual superannuation allowance calculated at the rate of *ten shillings* for each complete year of recorded service. (5)

(3.) . . . Repealed by Act of 1912 (p. 495).

(4.) . . . Repealed by Act of 1912 (p. 495).

(5.) "Recorded service" for the purposes of this Act shall be such service in the capactity of certificated teacher in a public elementary school, not being an evening school, as is recorded by the Education Department, and may include such service as is so recorded in the capacity, within the meaning of the Education Code, either of a teacher in a training college, or of organising teacher, or of teacher of a central class for pupil teachers, or in such other capacity in or connected with public elementary schools as may be for the time being prescribed, or in the capacity of a certificated teacher in a certified reformatory or industrial school; but no service after the teacher attains the age of sixty-five years, shall be recorded service for the purpose either of contribution to the deferred annuity fund, or of determining the amount of any allowance under this Act. (6)

Note 1.—(1.) The Treasury and the Education Department made rules dated the 1st of April, 1899, for carrying this Act into effect. The rules may be cited as the Elementary School Teachers Superannuation Rules, 1899, and in the notes on the provisions of this Act these rules are referred to as the rules under the Act. The rules

came into operation at the same time as the commencement of the Act, viz. on the 1st of April, 1899. They were set out in the previous edition of this work, but in view of the School Teachers (Superannuation) Act, 1918, it does not seem necessary to reprint all of them in the present edition. Those rules are noted below which relate to payments, etc., to teachers already receiving and those who will hereafter receive benefits under this Act and not under the School Teachers (Superannuation) Act, 1918.

The expression "certificated teacher," unless the context otherwise requires, means a teacher who is recognised under the "Education Code" as a certificated teacher for public elementary schools, and the "Education Code," means such minutes of the Board of Education as are for the time being in force for the purpose of the Elementary Education Act, 1870. See sec. 11.

By sec. 12 (1) of the School Teachers (Superannuation) Act, 1918, no teacher, other than a teacher who is not entitled to benefits under that Act, shall make any contribution towards a deferred annuity under the Act of 1898 in respect of service after the commencement of the Act of 1918 (1st April, 1919), but he will be entitled to a deferred annuity in respect of the contributions he has made before that date.

(2.) See sec. 13 (2) of the School Teachers (Superannuation) Act, 1918, which enables the Board to continue in force, till the commencement of that Act, any teacher's certificate which would otherwise have expired in the period between the passing of that Act (21st November, 1918), and its commencement (1st April, 1919).

(3.) "Recorded service" is defined in sub-sec. (5). A certificated teacher could contribute to the fund during any interval not exceeding six months in which such teacher was not employed in recorded service, with the view to that time being reckoned as if it were recorded service. See sec. 6 (1) and note (6) on p. 481.

The amount of contribution was finally altered to £3 12*s.* for a man and £2 8*s.* for a woman, by sec. 1 of the Elementary School Teachers (Superannuation) Act, 1912. The words enabling alteration at the end of para. (*b*) were repealed by sec. 1 (1) of the Act of 1912.

For the words "*to the deferred annuity fund*," the words "towards deferred annuities" are substituted by sec. 12 (4) of the School Teachers (Superannuation) Act, 1918; see also sec. 12 (1) of that Act.

(4.) By sec. 12 (4) of the School Teachers (Superannuation) Act, 1918, the words "to payment by the National Debt Commissioners" are to be substituted for the words "*out of the deferred annuity fund.*"

No return of any kind can be made for a teacher's contributions, unless he lives to the age of sixty-five years. The only return which can be then made is the annuity due to himself. Under no circumstances whatever can the teacher or his relations have the contributions or any part of them returned in a lump sum. On the other hand, however few or broken a teacher's contributions may have been, the annuity to which they entitle him will be payable upon his reaching the prescribed age, whether he is then in service or not.

Sub-sec. (*c*) refers to the annuity payable to a teacher who becomes certificated after the 1st April, 1899, when he attains the age of sixty-five years, "out of the deferred annuity fund," whilst sub-sec. (*d*) relates to the superannuation allowance payable out of moneys provided by Parliament.

The amount of the annuity will depend on the number of the contributions of the teacher and the times at which they were paid.

Tables shewing the annuity in the case of teachers are set out on p. 494.

As to the collection of the contributions to deferred annuity fund,

see sec. 3 ; as to payment of annuities and prohibition of assignment of or charge on annuities, see sec. 9 ; and as to punishment for fraud and personation in connection with annuities, see sec. 10.

See sec. 7 of the Act, as to the application of the Act to any person, or as to the amount of any annuity or allowance under the Act, or as to the grant, refusal, suspension or cessation of any such allowance and as to the reckoning of service for any purpose of the Act.

(5.) Sec. 1 (2) of the Elementary School Teachers (Superannuation) Act, 1912, provided that as regards persons who attained the age of sixty-five years on or after the 1st April, 1912, or might attain it after the 7th August, 1912, the provisions of sec. 1 (2) (*d*) and sec. 5 (2) (*a*) of the Elementary School Teachers (Superannuation) Act, 1898, were to have effect and be deemed to have had effect as if for the words "*ten shillings*" there were substituted the words "one pound."

With regard to the superannuation allowance provided for by the sub-section, the Education Department stated as follows :—

The superannuation allowance cannot become payable till a teacher has attained the age of sixty-five years, and it will be in addition to any annuity to which he is entitled. Unlike the annuity, however, it can only be obtained by a teacher whose years of recorded service upon his reaching the age of sixty-five are not less than half the number of years which have elapsed since he became certificated. Thus, a teacher, who, at the age of sixty-five, has been certificated for forty-four years must have served twenty-two years in recorded service, if any allowance at all is to be awarded to him. The years of service, however, need not be continuous, nor is a teacher obliged to remain in service up till the age of sixty-five. As soon as he has completed the minimum amount of service required he may, if he chooses, give up teaching. If he lives till the age of sixty-five, the allowance due in respect of his recorded service will be paid to him.

The allowance is liable to forfeiture, suspension, or reduction, in cases of misconduct (secs. 8 and 10).

The allowance is calculated in the case of a teacher who becomes certificated after the 1st of April, 1899, and who attains the age of sixty-five on or after the 1st April, 1912, at the rate of £1 for each complete year of recorded service. (As to "recorded service," see sub-sec. 5 of this section.) If he serves forty complete years, he may thus be granted an annual superannuation allowance of £40 for the remainder of his life. Any fraction of a year over the number of complete years served must be disregarded.

As to payment of superannuation allowances and prohibition of assignment of or charge on these allowances, see sec. 9 ; as to forfeiture for misconduct, see sec. 8 ; as to punishment for fraud and personation in connection with the allowances, see sec. 10 ; and as to decision by Treasury and Board of Education with regard to questions as to grant, refusal, suspension, or cessation of allowances, &c., see sec. 7.

With regard to the application of the Act to teachers certificated before the 1st April, 1899, see sec. 5.

(6.) "Recorded service" is defined by sec. 1 (5) of the Act, together with Rule 9 of the Rules under the Act; and the effect of the provisions made therein is to include as recorded service, service in the following capacities :—

(*a*) Of a teacher in public elementary schools ; certified schools for blind, deaf, defective or epileptic children ; and certified efficient schools.

(*b*) Of a teacher in a certified reformatory or industrial school.

(*c*) Central classes in subjects which under the code may be taught off the school premises to scholars in public elementary schools.

Recorded service is also limited in point of the time during which it

may continue; no service after a teacher attains the age of sixty-five years can be recorded service for the purposes of the Act.

Sec. 13 (5) of the School Teachers (Superannuation) Act, 1918, provides that service after the commencement of that Act (1st April, 1919), in an elementary school (not being a public elementary school) recognised by the Board as a certified efficient school shall not, unless the service is recognised service within the meaning of the Act of 1918 (see sec. 18), be recorded by the Board under the Act of 1898.

Before 1st June, 1907, the Board used to record service in Training Colleges or Public Teacher Centres or as Organising Teachers. This practice was discontinued; but teachers so employed between 1st June, 1906, and 31st May, 1907, may continue to have their service recorded so long as they serve in any of those capacities (see Circular 563, dated 14th May, 1907, not in this volume).

Intervals of Recorded Service.—A certificated teacher shall be permitted to pay contributions in respect of any interval not being longer than six months between his employments in recorded service, and, where contributions are so paid in respect of any such interval, that interval shall be reckoned as recorded service. (Rule 13 (1) as amended in May, 1911.)

Where a teacher desires to pay any such contributions in respect of an interval, he shall, on resuming recorded service, give notice to the Board of Education that contributions are to be paid in respect of the interval, and the amount of contributions so due shall be added to the payment or deduction next made on account of contributions. (Rule 13 (2).)

Allowances to Incapacitated Teachers.

2.—(1.) Where a teacher satisfies the Treasury in the prescribed manner that he—

(*a*) has served a number of years of recorded service not less than ten and not less than half the years which have elapsed since he became certificated; and

(*b*) has not at the date of the application been for more than the prescribed time unemployed in recorded service; and

(*c*) has become permanently incapable, owing to infirmity of mind or body, of being an efficient teacher in a public elementary school; and

(*d*) is not excluded by the prescribed disqualifications;

the Treasury may, subject to the prescribed conditions and to the provisions of this Act, grant to such teacher out of moneys provided by Parliament an annual allowance (in this Act called "a disablement allowance") not exceeding—

(*a*) if the teacher is a man, twenty pounds for ten complete years of recorded service, with the addition of *one pound* for each complete additional year of recorded service; and

(*b*) if the teacher is a woman, fifteen pounds for ten complete years of recorded service, with the addition of *thirteen shillings and fourpence* for each complete additional year of recorded service; and

(*c*) in any case, the total annual sum which the teacher might obtain from an annuity and superannuation allowance under this Act by continuing to serve until the age of sixty-five years.

(2.) If the grantee of a disablement allowance attains the age of sixty-five years, any annuity which would otherwise be payable to the grantee *out of the deferred annuity fund* shall, except where the allowance has ceased by reason of the grantee being again employed as a teacher in recorded service, be paid to the Treasury and applied as they direct . . . and, in that case, the Treasury shall not award any superannuation allowance to the grantee.

(3.) A disablement allowance shall be reconsidered by the Treasury at intervals not exceeding three years; and the rules shall provide for the suspension, cessation, or reduction of the allowance in whole or in part, if the prescribed conditions are not complied with or the prescribed disqualifications apply, and those disqualifications shall deal with the cases of persons who have caused or increased their infirmity by their own misconduct or default, or who marry or cease to be incapable, . . .

Note 2.—This section refers to teachers certificated after the 1st of April, 1899. See sec. 5 as to the application of these provisions to teachers who became certificated teachers before that day.

Sub-sec. (1.)—The provision made in sec. 2 of the School Teachers (Superannuation) Act, 1918, for gratuities in cases of short service, appears to be more favourable for the incapacitated teachers to whom it applies than sec. 2 above.

By sec. 1 (3) of the Elementary School Teachers (Superannuation) Act, 1912, persons who apply for and receive a disablement allowance under the above section on or after 1st April, 1912, will be entitled to one pounds ten shillings, instead of one pound, under para. (*a*) and to one pound, instead of thirteen and fourpence, under para. (*b*).

The following are the rules under this Act with regard to *disablement allowances*:—

Mode of making Application for a Disablement Allowance.—An application by a teacher for a disablement allowance must be made by him to the Treasury through the Board of Education, but if the teacher is of unsound mind, or otherwise unable, in the opinion of the Board of Education, to make the application himself, the application may be made by any other person on his behalf. Rule 15 (1).

The application must be sent to the Board of Education, and if made in manner required by this rule will be submitted by them to the Treasury. Rule 15 (2).

Where an application is made on behalf of a teacher by another person, the reasons for the application not being made by the teacher himself must be stated in the application, and the Board of Education may refuse to submit any application to the Treasury if those reasons are not in their opinion sufficient. Rule 15 (3).

The Board of Education will, as soon as may be, inform a teacher applying for a disablement allowance, or any person making an application on behalf of a teacher, of the decision of the Treasury with regard to the application, and will also inform the managers of the school at which the teacher was last employed. Rule 15 (4).

Medical Examination and Report.—A teacher applying for a disablement allowance must, except as otherwise provided by this rule, submit himself for special medical examination to a medical officer chosen by the Board of Education, whose name and address will be given to the teacher by that Department. Rule 16 (1).

Where a teacher is an inmate of a public lunatic asylum, a special medical examination will be dispensed with, and the report of the medical officer of the asylum will be accepted by the Board of Education in lieu of the report of the medical officer chosen by that Department. Rule 16 (2).

The Board of Education may also dispense with the special medical examination in any case in which a medical report sufficient in their opinion is furnished to them as to the condition of the teacher, and in which they are satisfied that the special medical examination is owing to exceptional circumstances inexpedient or impracticable, and may accept the medical report so furnished in lieu of the report of the medical officer chosen by the Board of Education. Rule 16 (3).

The report under this rule of a medical officer chosen by the Board of Education, and any medical report accepted by the Board of Education in lieu thereof, must state, (*a*) whether in the opinion of the person making the report the teacher has or has not become permanently incapable owing to infirmity of mind or body of being an efficient teacher in a public elementary school; and (*b*) whether in the opinion of the person making the report the infirmity of the teacher has or has not been caused or increased by the teacher's own misconduct or default. Rule 16 (4).

Information to be Furnished as to Certain Matters.—A teacher applying for a disablement allowance, or if the application is made on behalf of the teacher by any other person, the person making the application must furnish to the Board of Education a statement stating particulars, (*a*) as to the number of years of the teacher's recorded service, and the number of years which have elapsed since the teacher became certificated; and (*b*) as to the dates on which any periods of recorded service have commenced and ended; and (*c*) as to the pecuniary circumstances* of the teacher; and (*d*) if the teacher is a woman, as to whether the teacher is or has been married or not. Rule 17 (1).

The Board of Education may in any case require the statement to be verified by further evidence, or by a statutory declaration or otherwise in such manner as they think fit. Rule 17 (2).

Medical Report, Particulars, and Certificate to be submitted to Treasury.—The Board of Education on submitting an application for a disablement allowance to the Treasury shall submit to them the report of the medical officer after the special medical examination required by these rules, or the medical report accepted in lieu thereof, and the statement of particulars furnished to them by the teacher, and shall also submit their own report upon the case. Rule 18 (1).

The Board of Education shall certify to the Treasury, (*a*) whether the teacher has served a number of years of recorded service not less than ten, and not less than half the years which have elapsed since he became certificated or not; and (*b*) whether the teacher has at the date of the application been for more than the time fixed by the rules unemployed in recorded service or not. Rule 18 (2).

Matters of which Treasury are to be satisfied.—Before granting a disablement allowance the Treasury must be satisfied by the certificate of the Board of Education, (*a*) that the teacher has served a number of years of recorded service not less than ten, and not less than half the years which have elapsed since he became certificated;

* As to pecuniary need see the note to sub-sec. (3), p. 486.

and (*b*) that the teacher has not at the date of the application been for more than the time fixed by these rules unemployed in recorded service; and must also be satisfied that the teacher has become permanently incapable, owing to infirmity of mind or body, of being an efficient teacher in a public elementary school, and is not excluded by the disqualifications provided by these rules. Rule 19 (1).

Period during which Teacher has been Unemployed at Date of Application.—The time during which a teacher, in order to obtain a disablement allowance, must not at the date of the application for the allowance have been unemployed in recorded service is one year, or such extended time as the Treasury on the report of the Board of Education may allow in cases where they are satisfied that there is a sufficient cause for an application not having been made within one year after the termination of the teacher's recorded service. Rule 20.

Disqualifications for Disablement Allowance.—The following disqualifications shall have effect as regards the grant of disablement allowances:—

(1.) A teacher shall be disqualified for the grant of an allowance if he is not in pecuniary need of it, and shall be disqualified for a grant of part of an allowance if he is not in pecuniary need of that part.*

(2.) A teacher shall be disqualified for the grant of an allowance if his infirmity has been wholly caused by his own misconduct or default, and, if his infirmity though not wholly so caused has been increased by his own misconduct or default, shall be disqualified for the grant of such part of the allowance as the Treasury think fit.

(3.) A teacher who is a woman and has married since her last employment in recorded service shall be disqualified for the grant of an allowance. Rule 21.

Payment of Disablement Allowances.—A disablement allowance, if granted, will be payable from the date on which the application reached the Board of Education, or from the date on which the teacher's paid service has ceased, whichever is the later date. Rule 22 (1).

Service after the date on which the application for a disablement allowance has reached the Board of Education will not be reckoned as recorded service for the purpose of that allowance. Rule 22 (2).

Provision as to Discontinuance of Allowance.—The Treasury may suspend, determine, or reduce any disablement allowance, if at any time after the grant thereof, whether on the periodical reconsideration of the allowance or not, they are satisfied that any of the following disqualifications apply, namely, (*a*) that the teacher has ceased to be incapable owing to infirmity of mind or body, of being an efficient teacher in a public elementary school; [(*b*) that the teacher has ceased to be in pecuniary need* of the allowance, or of any part of it]; (*c*) that the teacher, if a woman, has married. Rule 23 (1).

Any application on behalf of a teacher for the resumption of the payment of a disablement allowance which has been suspended, shall be made to the Treasury through the Board of Education. Rule 23 (2).

Documents to be sent for the Periodical Reconsideration of the Allowance.—For the purpose of the periodical reconsideration of a disablement allowance, the following documents shall be sent by or on behalf of the teacher in receipt of the allowance to the Treasury through the Paymaster-General before the day for the quarterly payment which comes next before each completed period of three years from the commencement of the allowance: (*a*) A certificate of a qualified medical practitioner stating whether or not the teacher is still incapable owing

* As to pecuniary need see the note to sub-sec. (3), p. 486.

to infirmity of mind or body of being an efficient teacher in a public elementary school (*the certificate is not necessary where the teacher has reached the age of sixty-five* (*Rule of* 1904)); (*b*) A statement of the teacher's income from all sources; (*c*) A statement by the teacher, or in the case of his being of unsound mind or practically incapable of making the declaration, by some person on his behalf, (i.) that the circumstances of the teacher are such that he is still in pecuniary need* of the allowance; and (ii.) that the teacher, if a woman, has not married during the period to which the documents relate. Rule 24 (1).

A disablement allowance is granted on the condition that the requirements of these rules as to the sending of documents for the purpose of the periodical reconsideration of the allowance (*see sec.* 2 (2) *of the Act of* 1912) are complied with, and if those requirements are not complied with, the Treasury may suspend, determine, or reduce the allowance as they think fit. Rule 24 (2).

Sub-sec. (2).—Provision is made in sec. 2 (1) of the Elementary School Teachers (Superannuation) Act, 1912, as to annuities for teachers whose disablement allowance has ceased and who attain the age of sixty-five on or after the 1st April, 1912.

Payment is in future to be made by the National Debt Commissioners, instead of out of the deferred annuity fund, which is abolished by the School Teachers (Superannuation) Act, 1918; see sec. 12 (4) of that Act, which also repeals the words "towards the payment of disablement allowances" in sec. 2 (2) above.

Sub-sec. (3).—Sub-sec. 2 (2) of the Elementary School Teachers (Superannuation) Act, 1912, provides that notwithstanding the provision above a disablement allowance need not be reconsidered at intervals of not less than three years in any case where the Treasury so direct.

The provision at the end of sub-sec. 3 as to the withdrawal of the disablement allowance from persons who are not in pecuniary need of it was repealed by sec. 13 (3) of the School Teachers' (Superannuation) Act, 1918.

With regard to the forfeiture of disablement allowances, see sec. 8; as to payment of allowances and the prohibition of assignment of or charge on allowances, sec. 9; as to the decision of the Treasury and Board of Education with regard to allowances, sec. 7; and as to punishment for fraud and personation in connection with the allowances, sec. 10.

Collection of Contributions and Deferred Annuity Fund arising therefrom.

3.—(1.) The contributions under this Act from certificated teachers shall be paid to the Education Department at the prescribed time, and in the prescribed manner by the teachers or their employers; and the receipt of the Education Department for the amount of a contribution paid by the employer of a teacher shall be a good discharge for the like amount of remuneration otherwise payable to the teacher.

(2.) The contributions so received by the Education Department shall be paid to the National Debt Commissioners. . . .

Note 3.—Words at the end of sub-sec. (2) required the contributions to be invested to form a "deferred annuity fund"; but these words as well as sub-secs. 3, 4, 5 and 6 of this section have been

* As to pecuniary need see the note to sub-sec. (3), p. 486.

repealed by sec. 12 (4) of the School Teachers (Superannuation) Act, 1918. See also sec. 12 (1) and (2) of that Act, as to cessation of contributions under this Act where the teacher takes the benefit of the Act of 1918.

The prescribed rules with regard to the payment of contributions under this Act have not been reprinted here in view of the provisions of sec. 12 (1) of the Act of 1918.

Tables of Deferred Annuities.

4.—(1.) *The Treasury shall cause tables to be constructed showing the amount of annuity payable out of the deferred annuity fund to men and women teachers respectively in respect of the contributions made by them from time to time under this Act, and so framed as to secure the fund against loss.*

(2.) *If it appears from any actuarial report under this Act that the assets and liabilities of either account of the fund are such as either to require a reduction or to justify an increase of the annuities, the Treasury may cause fresh tables to be constructed, and those tables, when approved by the Treasury, shall come into force and shall be laid before Parliament, and the former tables shall cease to be in force, and so on from time to time as occasion requires.*

Note 4.—This section was repealed by sec. 12 (4) of the School Teachers (Superannuation) Act, 1918.

Annuity tables prepared in accordance with the requirements of this section will be found on p. 494.

Application of Act to existing Teachers.

5. With respect to the application of this Act to certificated teachers who became certificated before the commencement of this Act (in this Act referred to as "existing teachers") the following provisions shall have effect:—

(1.) The Education Department shall, in the prescribed manner, give to each existing teacher the option, within the prescribed time, not being more than one year after the commencement of this Act, of accepting, in the prescribed manner, this Act.

(2.) If any existing teacher does not so accept this Act, it shall not apply to him. If an existing teacher does so accept this Act, it shall apply to him with the following modifications; that is to say:—

(*a.*) The rate of *ten shillings* upon which the superannuation allowance is calculated may be augmented in the case of a man by threepence, and in the case of a woman by twopence, for each complete year of recorded service served before the commencement of this Act;

(*b*) If the teacher has at the date of the acceptance attained the age of sixty-five years or any greater age, and has

served in recorded service throughout the seven years next before the commencement of this Act, the provisions with respect to the expiration of the certificate shall apply as if the date of the acceptance were substituted for the date at which the teacher attained the age of sixty-five years;

(*c*) If the teacher has not at the date of the acceptance attained the said age, he must serve in recorded service after the commencement of this Act, and where, during any part of the seven years next before the commencement of this Act, he was not in recorded service, the duration of the recorded service after the commencement of this Act must not be less than the said part of the seven years.

(3.) Nothing in this section shall authorise the grant of any allowance to any teacher who at the commencement of this Act is in receipt of a pension out of moneys provided by Parliament for the service of education.

Note 5.—(1.) The rules made as to the *option of existing teachers* under this Act were printed on p. 422 of the previous edition of this work. They are not reprinted in the present edition, being practically obsolete.

The sum of "ten shillings" was increased to "one pound" by sec. 1 (2) of the Elementary School Teachers (Superannuation) Act, 1912, for the persons qualified as mentioned in that section (p. 495).

With respect to the provision that the rate of (ten shillings) may be augmented in the case of a man by threepence and in the case of a woman by twopence, for each complete year of recorded service served before the commencement of the Act, the Education Department said: "The effect of this provision is that the allowance for each year of service in the case of an existing teacher is—For men, £1 + 3*d.* × number of complete years of service before 1st April, 1899. For women £1 + 2*d.* × number of complete years of service before 1st April, 1899."

The annual pension under this Act due to masters at the age of sixty-five will thus be found by adding to £1 as many threepences as years of service previous to 1st April, 1899, and multiplying the sum thus obtained by the total number of years of recorded service, whether before or after 1st April, 1899. The annual pension due to mistresses will be found similarly, 2*d.* being substituted for 3*d.*

The pensions referred to in sub-sec. (3) were granted to certificated teachers and to students in training colleges under Minutes made in 1846 and 1851 and cancelled in 1862. The rules relating to them were printed on p. 646 of the previous edition of this work. They are not reprinted in the present edition, the pensions being practically obsolete.

Rules.

6.—(1.) The Treasury and the Education Department may make rules for carrying into effect this Act, and shall provide thereby—

(*a*) for permitting certificated teachers to pay contributions to the deferred annuity fund during any

interval not exceeding six months in which they are not employed in recorded service, and for reckoning the time in respect of which such contributions are made, as if it were recorded service ; (1)

(*b*) for the application of an annuity or allowance under this Act when payable to a person who is of unsound mind, or otherwise incapable of giving a receipt. (2)

(*c*) for the suspension of all or any part of an allowance when the grantee is wholly or partly maintained out of any public money ; and (3)

(*d*) for the payment of any sum under one hundred pounds due on the death of a person without the production of probate or other proof of the title of the personal representative of such person. (4)

(2.) All rules made under this section shall be laid, as soon as may be, before both Houses of Parliament.

(1.) See Notes (1), (3) and (6) to sec. 1 as to the rules referred to in (*a*).
(2.) See Rule 29 in note to sec. 9, p. 491.
(3.) See Rule 30 in note to sec. 9, p. 491.
(4.) See Rule 28 as to payments on death of teacher in note to sec. 9, p. 491.

Decision of Treasury and Education Department.

7. Any question which arises as to the application of any section of this Act to any person, or as to the amount of any annuity or allowance under this Act, or as to the grant, refusal, suspension, or cessation of any such allowance, shall be referred to the Treasury, and any question as to the reckoning of any service for any purpose of this Act shall be referred to the Education Department, and the decision of the Treasury or Education Department on any question so referred shall be final.

Forfeiture for Misconduct.

8.—(1.) Where the certificate of a teacher is suspended or cancelled by the Education Department, the teacher shall not be entitled to any disablement allowance under this Act unless the certificate is restored by the Department.

(2.) Where the Education Department certify to the Treasury that a recipient of any superannuation allowance, or disablement allowance under this Act, has been proved to them to have been guilty of any act or conduct which, if he had continued to serve as a teacher, would have justified them in suspending or cancelling his certificate, the Treasury shall suspend or determine the allowance in whole or in part.

As to Payment and Assignment of Annuities and Allowances.

9.—(1.) Every annuity and allowance under this Act shall be payable quarterly at such times and payable and apportionable in such manner as the Treasury may fix.

(2.) Every assignment of or charge on, and every agreement to assign or charge, any annuity or allowance to a teacher under this Act, whether payable presently or at some future date, shall be void, and on the bankruptcy of the teacher the annuity or allowance shall not pass to any trustee or other person acting on behalf of the creditors, but this provision shall be without prejudice to any order of the Court made under sec. 53 of the Bankruptcy Act, 1883, or any corresponding enactment in Scotland or Ireland.

Note 9.—The Rules under the Act as to *payment of annuities and allowances* and *payment on death or incapacity of teacher* are as follows:—

Where a teacher claims to be entitled to an annuity, he must send to the Treasury, through the Board of Education, an application for the payment of the annuity, and, if he wishes for the grant of an annual superannuation allowance, for the grant of that allowance and shall send with the application particulars as to his age and his years of recorded service since he became certificated. Rule 25 (1).

As soon as the Treasury are satisfied that the teacher applying for the payment of an annuity is entitled to the annuity, they will direct the Paymaster-General to pay the annuity in manner provided by these rules, and send notice to the teacher through the Board of Education that the direction has been given. Rule 25 (2).

The Treasury will, as soon as may be, through the Board of Education, send notice to the teacher applying for the grant of an annual superannuation allowance of their decision in the matter, and if the allowance is granted will direct the Paymaster-General to pay the allowance in manner provided by these rules. Rule 25 (3).

A teacher making an application under this section must give the Treasury any information they may require in addition to the particulars furnished by him on his application. Rule 25 (4).

An annuity or allowance under the Act shall be considered as accruing from day to day, but shall be payable by equal quarterly payments at the close of each quarter ending on the quarter days mentioned in this rule. Rule 26 (1).

Where an annuity or allowance begins or ends during a quarter, an apportioned part of the annuity or allowance shall be payable on the quarter day after the annuity or allowance has begun or ended, calculated according to the number of days in the quarter. Rule 26 (2).

The quarter days for the purpose of this rule are the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December. Rule 26 (3).

Payments on account of annuities or allowances under the Act will be made by the Paymaster-General, and, if the Paymaster-General makes arrangements for the purpose, may be made locally. Rule 26 (4).

Such evidence of the life and identity of a teacher must be produced to the Paymaster-General as he may require before making any payment to or on account of the teacher. Rule 26 (5). *See p.* 512.

No sum will be paid on account of any annuity or allowance to a

teacher, unless all the contributions due from him in respect of the annuity have been fully paid. Rule 27.

Payments on Death or Incapacity of Teacher.—Where on the death of any teacher any sum is due to his estate on account of any annuity or allowance under the Act, the Treasury may, if probate or other proof of the title of the personal representative of the teacher is not produced to them within three months of the death, authorise the Paymaster-General to pay the sum due to, or distribute it amongst the persons appearing to the Treasury to be beneficially entitled to the personal estate of the teacher, and the Treasury and the Paymaster-General shall be discharged from any liability in respect of such payment or distribution. Rule 28 (1).

Any person claiming to have a payment made to him under this rule must transmit to the Treasury through the Paymaster-General a statutory declaration showing the title under which he makes the claim, and such other particulars in relation thereto as the Paymaster-General requires. Rule 28 (2).

Where the Treasury are satisfied by the certificate of a justice of the peace, or minster of religion, and of a duly qualified medical practitioner, that a teacher in receipt of an annuity or allowance under the Act is of unsound mind or otherwise incapable of giving a receipt they may authorise the Paymaster-General to pay any sum due on account of any such annuity or allowance, partly to the institution or person having the care of the teacher, partly for the benefit of the wife, husband, or relatives of the teacher in such proportion and in such manner as the Treasury direct.

Provided that where any such teacher is maintained in any asylum or other institution supported out of local rates, any sum due on account of a superannuation or disablement allowance shall be applied towards the maintenance of the teacher before it is applied for the benefit of the wife, husband, or relatives of the teacher, and any sum due on account of an annuity shall be applied towards the maintenance of the wife (or children) (if any) of a teacher dependent on him before it is applied towards the maintenance of the teacher. Rule 29 (1).

Any application with regard to the payment of an annuity or allowance under this rule should be made to the Treasury through the Paymaster-General. Rule 29 (2).

An authority given by the Treasury for the payment or application of any annuity or allowance under this rule will remain in force until cancelled or varied, but will be cancelled or varied as occasion requires, and the Paymaster-General may at any time suspend any payment under the rule until he is satisfied that the circumstances are such as to justify the continuance of the payment. Rule 29 (3).

Where a teacher becomes a pauper lunatic, or is otherwise wholly or partly maintained out of public money, so much of any allowance shall be suspended as is equal to the sum which the Treasury consider is contributed out of public money towards the cost of maintaining the teacher, or if that sum is equal to or greater than the allowance the whole of the allowance shall be suspended. Rule 30.

Sub-sec. (2).—Sec. 53 of the Bankruptcy Act, 1883 (which related to the appropriation to creditors of a portion of the salary or pay of the persons mentioned in that section), was repealed by the Bankruptcy Act, 1914. It is re-enacted without alteration in sec. 51 of the latter Act. See p. 512.

Punishment for Fraud and Personation.

10. If any person—

(*a*) for the purpose of obtaining for himself or any other

person any annuity or allowance under this Act, personates any person, or makes any false certificate, false representation, or false statement, or makes use of any false certificate or document, false representation, or false statement, knowing the same to be false ; or

(*b*) by means of any such false certificate, document, representation, or statement, or by other fraudulent means, or by any personation, obtains or attempts to obtain for himself or any other person any annuity or allowance under this Act,

he shall on conviction on indictment be liable to imprisonment, with or without hard labour, for a term not exceeding two years, and on summary conviction be liable to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds, and any penalty under this section may be in addition to any suspension or determination of his allowance under this Act. For the purposes of this section the obtaining of an annuity or allowance includes the increase of any annuity or allowance, and the prevention or rescission of any cessation or suspension of an annuity or allowance, and the obtaining of any sum in respect of any annuity or allowance.

Definitions.

11. In this Act, unless the context otherwise requires—

The expression "certificated teacher" means a teacher who is recognised under the Education Code as a certificated teacher for public elementary schools :

The expression "certificate" includes any document issued by the Education Department, which recognises a teacher as a certificated teacher :

The expression "Education Code" means such minutes of the Education Department as are for the time being in force for the purpose of the Elementary Education Act, 1870 :

The expression "prescribed" means prescribed by rules under this Act.

Application to Scotland.

12. In the application of this Act to Scotland,* the following provisions shall have effect :—

(1.) The expression "Education Department" means the Scotch Education Department, and the expression "Education Code" means the Scotch Education Code :

* In respect of service before 1st April, 1912. See the Education (Scotland) Act, 1908, sec. 14 (6); the Scotch Superannuation Scheme for Teachers, 1911 ; and sec. 24 of the Education (Scotland) Act, 1918.

(2.) The expression "public elementary school" means a public or other school in receipt of annual parliamentary grant:

(3.) Section 149 of the Bankruptcy (Scotland) Act, 1856, shall be substituted for section 53 of the Bankruptcy Act, 1883;

(4.) The Education (Scotland) Act, 1872, shall be substituted for the Elementary Education Act, 1870:

(5.) Nothing contained in or done under this Act shall apply to or affect any teacher of a public school in Scotland appointed before the passing of the Education (Scotland) Act, 1872, unless the teacher has accepted this Act in pursuance of the provisions of section 5 hereof:

(6.) It shall not be lawful for a school board in Scotland to grant under the powers conferred by Section 61 of the Education (Scotland) Act, 1872, a retiring allowance payable out of the school fund to any teacher of a public school under their management who has accepted this Act, in pursuance of the provisions of section 5 hereof, or to whom this Act otherwise applies.

Extent of Act.

13. This Act shall not extend to Ireland.

Commencement of Act.

14. This Act shall come into operation on the first day of April next after the passing thereof or on such day, not more than three months later, as may be fixed by Her Majesty in Council.

Short Title.

15. This Act may be cited as the Elementary School Teachers (Superannuation) Act, 1898.

ANNUITY TABLES.

ELEMENTARY SCHOOL TEACHERS (SUPERANNUATION ACT, 1898 (1).

TABLE shewing the AMOUNT of ANNUITY, payable quarterly, from the attainment of the age of sixty-five years in return for a Contribution made by or on behalf of a Teacher of the age under-mentioned.

NOTE.—Fractions of fourpence are to be omitted in the Total Annuity to be granted for any series of Contributions.

Age at which a Contribution is treated as having been paid (Rules 10 (5), 11, 12 and 13, of 1899).	MEN. Amount of Annuity for a Contribution of £3 (2).	WOMEN. Amount of Annuity for a Contribution of £2 (2).
	£ s. d.	£ s. d.
20 and not exceeding 21	1 13 8	0 15 9
21 ,, 22	1 12 9	0 15 4
22 ,, 23	1 11 9	0 14 11
23 ,, 24	1 10 10	0 14 6
24 ,, 25	1 9 11	0 14 1
25 ,, 26	1 9 0	0 13 9
26 ,, 27	1 8 1	0 13 4
27 ,, 28	1 7 3	0 13 0
28 ,, 29	1 6 5	0 12 7
29 ,, 30	1 5 7	0 12 3
30 ,, 31	1 4 9	0 11 11
31 ,, 32	1 3 11	0 11 7
32 ,, 33	1 3 2	0 11 3
33 ,, 34	1 2 5	0 10 11
34 ,, 35	1 1 8	0 10 7
35 ,, 36	1 0 11	0 10 3
36 ,, 37	1 0 3	0 10 0
37 ,, 38	0 19 6	0 9 8
38 ,, 39	0 18 10	0 9 5
39 ,, 40	0 18 2	0 9 1
40 ,, 41 .. .	0 17 6	0 8 10
41 ,, 42	0 16 11	0 8 7
42 ,, 43	0 16 3	0 8 4
43 ,, 44	0 15 8	0 8 0
44 ,, 45	0 15 1	0 7 9
45 ,, 46	0 14 6	0 7 7
46 ,, 47	0 13 11	0 7 4
47 ,, 48	0 13 5	0 7 1
48 ,, 49	0 12 10	0 6 10
49 ,, 50	0 12 4	0 6 7
50 ,, 51	0 11 10	0 6 5
51 ,, 52	0 11 4	0 6 2
52 ,, 53	0 10 10	0 6 0
53 ,, 54	0 10 5	0 5 9
54 ,, 55	0 9 11	0 5 7
55 ,, 56	0 9 6	0 5 4
56 ,, 57	0 9 1	0 5 2
57 ,, 58	0 8 8	0 4 11
58 ,, 59	0 8 3	0 4 9
59 ,, 60	0 7 10	0 4 7
60 ,, 61	0 7 6	0 4 4
61 ,, 62	0 7 2	0 4 2
62 ,, 63	0 6 9	0 4 0
63 ,, 64	0 6 5	0 3 10
64 ,, 65	0 6 1	0 3 7

(1.) See 61 & 62 Vict., c. 57, secs. 1 and 4, pp. 479 and 487, *ante*.

(2.) The annuity purchased by contributions of any other amount can be calculated proportionately.

ELEMENTARY SCHOOL TEACHERS (SUPERANNUATION) ACT, 1912.

(2 & 3 Geo. V., c. 12.)

An Act to amend the Elementary School Teachers (Superannuation) Act, 1898, as originally enacted and as applied by any other Act.

[*7th August*, 1912.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Alteration of Rates of Contribution and Benefits.

1.—(1.) The rate of contribution under the Elementary School Teachers (Superannuation) Act, 1898 (hereinafter referred to as "the principal Act"), shall be fixed, in the case of a man, at three pounds twelve shillings and in the case of a woman at two pounds eight shillings a year, and accordingly in paragraph (*b*) of sub-section (2) of section one of the principal Act the words "three pounds twelve shillings" and "two pounds eight shillings" shall be substituted respectively for the words "three pounds" and "two pounds," and in the same sub-section the words "or at such increased rate as may for the time being be fixed by the Treasury in accordance with this Act," and sub-sections (3) and (4) (which authorise the Treasury to vary the rate of contribution) shall be repealed.

(2.) Paragraph (*d*) of sub-section (2) of section one and paragraph (*a*) of sub-section (2) of section five of the principal Act (which relate to the amount of superannuation allowances) shall, in their application to persons who attained the age of sixty-five years on or after the first day of April nineteen hundred and twelve, or who may hereafter attain that age, have effect, and be deemed as from the said date to have had effect, as if for the words "ten shillings" there were substituted the words "one pound."

(3.) Sub-section (1) of section two of the principal Act (which relates to the amount of disablement allowances) shall, in its application to persons who have applied for a disablement allowance on or after the first day of April nineteen hundred

and twelve, or who may hereafter apply for such an allowance, have effect and be deemed as from the said date to have had effect as if for the words "one pound" there were substituted the words "one pound ten shillings" and for the words "thirteen shillings and fourpence" there were substituted the words "one pound."

Note 1.—The Board of Education having certified that during the statistical years 1898-99 and 1899-1900 the average salary of certificated women teachers in England and Wales exceeded the sum of £76 11*s.* 9*d.* referred to in ss. 1 (3) of the Act of 1898 by more than ten per cent., the Treasury, by warrant dated 26th December, 1900, determined that from and after the 1st of April, 1901, the rate of contribution to the Deferred Annuity Fund should in the case of women teachers be increased from £2 a year to £2 4*s.* a year, "with (of course) a corresponding increase in such annuities as may be ultimately payable to teachers out of the fund."

Sub-sec. (1) of the Act of 1912 readjusted the rates of contribution, and finally settled them; at the same time repealing the authority given to the Treasury in sec. 1 (2) (*b*) of the Act of 1898 to vary the rate of contribution.

Supplemental Provisions as to Annuities and Allowances.

2.—(1.) Where a disablement allowance granted under the principal Act has been determined by the Treasury, whether before or after the passing of this Act, and the person to whom it was granted attained the age of sixty-five on or after the first day of April nineteen hundred and twelve or hereafter attains that age, he shall, notwithstanding anything in sub-section (2) of section two of the principal Act, be entitled to the like deferred annuity and may be granted the like superannuation allowance as if no disablement allowance had ever been granted to him.

(2.) Notwithstanding anything in sub-section (3) of section two of the principal Act a disablement allowance need not be reconsidered at intervals of not [more] than three years in any case where the Treasury so direct.

Note 2.—As to the determination of a disablement allowance under the Act of 1898, see sec. 2 (2) on p. 483, and Rule 23 (1) in the note to sub-sec. (3) of that section, p. 485.

In sub-sec. (2) of sec. 2 the word "more" was in effect substituted for "less" by sec. 13 (4) of the School Teachers (Superannuation) Act, 1918.

Application to Isle of Man and the Island of Jersey.

3. Nothing in this Act shall affect a teacher serving in the Isle of Man or the Island of Jersey or in respect of his service as a teacher in such Island unless and until the Legislature of the Isle of Man or the Island of Jersey, as the case may be, adopts this Act or any provisions thereof, and, if either such

Legislature does adopt this Act or any provisions thereof, the Elementary School Teachers Superannuation (Isle of Man) Act, 1900, or the Elementary School Teachers Superannuation Jersey) Act, 1900, as the case may be, shall be construed as if for references therein to the principal Act there were substituted references to the principal Act as amended by this Act or by the provisions adopted, as the case may be:

Provided that either such Legislature may, in adopting this Act or any provisions thereof, substitute some later date for the first day of April nineteen hundred and twelve.

Short Title.

4. This Act may be cited as the Elementary School Teachers (Superannuation) Act, 1912, and shall be construed as one with the principal Act, and that Act, the Elementary School Teachers Superannuation (Isle of Man) Act, 1900, the Elementary School Teachers Superannuation (Jersey) Act, 1900, and this Act may be cited together as the Elementary School Teachers (Superannuation) Acts, 1898 to 1912.

Note 4.—As to the effect of a provision that one Act shall be construed as one with another Act, see the note to sec. 52 of the Education Act, 1918, p. 437.

ELEMENTARY SCHOOL TEACHERS (WAR SERVICE SUPERANNUATION) ACT, 1914.

(4 & 5 Geo. V., c. 66.)

An Act to enable Certificated Teachers to reckon Service in connection with the present War as recorded Service for the purpose of the Acts relating to Elementary School Teachers' Superannuation.

[28*th August*, 1914.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Service in the War to be Equivalent for Superannuation purposes to Service as a Teacher.

1.—(1.) Service by a certificated teacher in any of the naval or military forces of the Crown in the present war, or any service by such a teacher in connection with naval or military operations in that war which the Board of Education consider may properly be treated in the same manner as actual naval or military service, may be recorded for the purposes of the Elementary School Teachers (Superannuation) Acts, 1898 to 1912, in the same manner as, and as equivalent to, service in the capacity of a certified teacher in a public elementary school.

(2.) The Board of Education may reckon as a period of service for the purposes of this Act any period during which a teacher, though not actually serving, is, as a result of his service, prevented or hindered from procuring work as a teacher owing to injury, illness, or any other cause.

(3.) Contributions in respect of any such service to the Deferred Annuity Fund may, notwithstanding anything in the Elementary School Teachers (Superannuation) Acts, 1898 to 1912, or any rules made thereunder, be received by the Board of Education at any time within six months after the end of the present war, or such later date as the Board of Education may by order determine.

Note 1.—The provision relating to war service contained in this Act extends only to the purposes of the Acts of 1898 to 1912. Sec. 15 (1) (*f*) of the School Teachers (Superannuation) Act, 1918, enables

that service to be treated, in the case of any teacher, as recognised or qualifying service for the purposes of the Act of 1918, and the enabling power has been acted upon by the Board of Education in Articles 18 and 19 of the School Teachers Superannuation Rules, 1919 (see p. 521).

As to the Deferred Annuity Fund, see p. 516.

As to the "end of the present war," see note (4) on p. 438.

Application to the Isle of Man and Jersey.

2. Section three of the Elementary School Teachers (Superannuation) Act, 1912, relating to the Isle of Man and the Island of Jersey (except the proviso thereto), shall, with the necessary modifications, apply to this Act as it applies to that Act.

Short Title.

3. This Act may be cited as the Elementary School Teachers (War Service Superannuation) Act, 1914.

War Service of a Teacher in the Territorial Force.

As to the position of an elementary school teacher who, being in the Territorial Force, was called up for service and was afterwards dismissed by the Local Education Authority from their employment, references may be made to *Sanderson* v. *Workington Borough Council* (34 T.L.R. 386).

NATIONAL HEALTH INSURANCE ACT, 1918.

(7 & 8 Geo. V., c. 62, Sec. 28.)

Provisions with Respect to Teachers.

28.—(1.) The following employments shall be deemed to be included among the excepted employments specified in Part. II. of the First Schedule to the principal Act :—

(*a*) Employment as a teacher in a public elementary school at any time after the person employed has undergone an examination in order to qualify for the position of a certificated teacher in such a school and before the announcement of the result of the examination :

(*b*) Employment as a pupil or student teacher, junior student or monitor in a public elementary school :

(*c*) Employment as a teacher of any class which may be specified in a special order made by the Insurance Commissioners after consultation with the Board of Education as being a class in the case of which the conditions of employment are similar to the conditions of employment prevailing in the case of teachers to whom the Elementary School Teachers (Superannuation) Act, 1898, applies, or to the conditions prevailing in the employments, specified in paragraphs (*a*) and (*b*) of this sub-section.

(2.) Section fifty-two of the principal Act (which makes special provisions with resepct to persons becoming certificated teachers) shall cease to have effect.

(3.) In the application of this section to Ireland the Commissioners of National Education shall be substituted for the Board of Education.

Note 28.—The "principal Act" is the National Insurance Act, 1911. With many exceptions, that Act made compulsory the health insurance, as employed contributors, of all persons who are of the age of sixteen and upwards and who are employed in the United Kingdom under any contract of service or apprenticeship, whether written or oral, expressed or implied. The exceptions (contained in Part II. of the First Schedule to the Act), included large classes of persons the terms of whose employment secured provision for sickness and disablement on the whole not less favourable than is conferred by health insurance under the National Insurance Act. The exceptions, however, did not at first include teachers in secondary schools, the governing bodies of which were not public authorities within the meaning of para. (*b*) of Part II. of the First Schedule to the Act of 1911.

Sec. 52 of the National Insurance Act, 1911, made special provision relating to the Deferred Annuity fund, with regard to certificated teachers to whom the Elementary School Teachers (Superannuation) Act, 1898, applied and who were exempted from contribution under the National Insurance Act, 1911.

Sec. 28 repealed sec. 52 of the National Insurance Act, 1911, and made the provision set out above for the additional classes of teachers there mentioned.

Sec. 17 of the School Teachers (Superannuation) Act, 1918, provides as follows:—

"The employment in recognised service of any person who is entitled to benefits under this Act" (1918), "shall be deemed to be included among the excepted employments specified in Part II. of the First Schedule to the National Insurance Act, 1911."

The effect of this legislation (speaking generally) is to except from the operation of the National Insurance Act, 1911, all certificated teachers who are entitled to benefits under the Elementary School Teachers (Superannuation) Act, 1898, all the persons specified in sec. 28 of the National Health Insurance Act, 1918, and all persons, who are employed in "recognised service" under the School Teachers (Superannuation) Act, 1918. "Recognised service" is defined in sec. 18 of the last mentioned Act (see p. 522).

SCHOOL TEACHERS (SUPERANNUATION) ACT, 1918.

(8 & 9 Geo. V., c. 55.)

An Act to make provision with respect to the grant of Superannuation Allowances to Teachers, and of Gratuities to their Legal Personal Representatives and to amend the Elementary School Teachers (Superannuation) Acts, 1898 to 1912.

[21*st November*, 1918.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Superannuation Allowances to Teachers.

1.—(1.) Subject to the provisions of this Act (including any rules made thereunder), the Board of Education (in this Act referred to as " the Board ") may grant such superannuation allowances as are hereinafter mentioned in this section to any teacher who—

(*a*) has attained the age of sixty years, and has either—

(i.) been employed—

(A) for not less than thirty years in recognised or qualifying service (1) ; and

(B) for not less than ten years, or, if he was employed in recognised service (1) at the commencement (2) of this Act, for not less than the prescribed (3) number of years, in recognised service ; and

(C) for not less than the prescribed (4) period after the commencement (2) of this Act in recognised or qualifying service (1) ; or

(ii.) being a teacher to whom the Act of 1898 applied at the commencement of this Act, (2) been employed in recognised service (1) for a period equal in the aggregate to not less than half the number of years between the date on which he became a certificated teacher and the date on which he attained or will attain the age of sixty-five years ; or

(*b*) having completed ten years of recognised service (1) and been employed in recognised service within the

prescribed (5) period before the date on which he applies for a superannuation allowance under this section, has, in the opinion of the Board, become permanently incapable (6) through infirmity of mind or body of serving efficiently as a teacher in recognised service.

(2.) The superannuation allowances which may be granted under this section are—

(*a*) an annual superannuation allowance of an amount not exceeding one-eightieth of the average salary (7) of the teacher in respect of each completed year of recognised service, (1) or one-half of the average salary, whichever is the less ; and

(*b*) by way of additional allowance a lump sum not exceeding one-thirtieth of the average salary (7) of the teacher in respect of each completed year of recognised service, (1) or one-and-a-half times the average salary, whichever is the less.

(3.) In the case of a woman teacher, who after ceasing in consequence of marriage to be employed in recognised service (1) has subsequently returned to recognised service and satisfies the prescribed conditions, (8) such number of years, not being less than twenty, as may be prescribed, shall be substituted for thirty years as the qualifying (8) period of service.

Note 1.—The School Teachers Superannuation Rules, 1919, dated 17th March, 1919, have been made by the Board of Education, with the consent of the Treasury, under sec. 15 of this Act. In the notes hereunder to this Act these Rules are referred to shortly as the Rules.

(1.) The expressions "recognised service" and "qualifying service" are defined in sec. 18 on pp. 522 and 523. In order to come within the former expression the service must always be in some sort of teaching ; but "qualifying service" appears to include employment in some capacity other than that of a mere teacher. The decision as to what is "qualifying service" rests with the Treasury, acting on a recommendation of the Board of Education; see p. 662.

(2.) The date of the commencement of this Act is fixed by sec. 20 (3). It is the 1st April, 1919.

(3.) Prescribed means prescribed by rules under the Act. The Board have not yet (February, 1920), prescribed any period for the purpose of sec. 1 (1) (*a*) (i.) (B). Until they have done so the required period of service under that head will be ten years.

(4.) By Rule 7, the period for which a teacher must have been employed after 31st March, 1919, in recognised or qualifying service in order to comply with the requirements of sec. 1 (1) (*a*) (i.) (C) of the Act shall be :—

(*a*) If a teacher has so served either (i.) continuously for two years immediately preceding 1st April, 1919, or (ii.) for three years out of the five years immediately preceding 1st April, 1919, and continuously for one year immediately preceding that date.	One day.

(*b*) If a teacher does not comply with either of the foregoing conditions but has so served for four years out of the seven years immediately preceding 1st April, 1919, and has served for one year after 1st April, 1916. — Twelve months.

(*c*) If a teacher does not comply with any of the foregoing conditions but has so served for six years out of the ten years immediately preceding 1st April, 1919, and for one year after 1st April, 1915. — Eighteen months.

(*d*) If a teacher does not comply with any of the foregoing conditions but has served for six years out of the ten years immediately preceding 1st April, 1919. — Two years.

(*e*) In any other case .. .. Three years.

(5.) By Rule 8, the prescribed period within which a teacher must be employed in recognised service before the date on which he applies for a Superannuation Allowance under sec. 1 (1) (*b*) shall be the period of six months immediately preceding the application.

(6.) The question whether a person is permanently incapable of serving efficiently as a teacher in recognised service is one for the determination of the Board of Education in each individual case. There must be some evidence laid before the Board to shew that the incapacity is likely to be permanent; and provided there is some evidence on which the Board can reasonably decide, their decision on the sufficiency of the evidence in the particular case is final and cannot be questioned in a court of law. See Rule 15 (3) and (4) on p. 505.

(7.) The expression "average salary" is defined in sec. 18, see pp. 523 and 526.

The provision for superannuation consists in an annual sum which is paid to the teacher yearly for the remainder of his life, and an additional allowance, a lump sum, which is paid to him once and for all at the time of his retirement.

(8.) *As to the qualifying period of service in the case of married women teachers who return to recognised service, it is provided as follows by*

Rule 9. (1.) When a woman teacher, who has ceased, in consequence of marriage, to be employed in recognised service, returns to recognised service, the qualifying period of service shall, subject as hereinafter provided, be thirty years less such number of complete years, not being more than ten, as have elapsed between the date when she ceased to be employed in recognised service and the date when she returned to recognised service.

(2.) A woman teacher who ceases on or after 1st April, 1919, in consequence of marriage, to be employed in recognised service shall not be entitled to the benefit of this rule unless within three months after the date of the cessation of her employment she furnishes the Board with such evidence as they may require that she has ceased in consequence of marriage to be employed in recognised service.

(3.) A woman teacher who ceased before 1st April, 1919, in consequence of marriage, to be employed in recognised service shall not be entitled to the benefit of this rule unless within three months after 1st April, 1919, or within three months after her return to recognised service, whichever may be the later, she furnishes the Board with such evidence as they may require that she ceased, in consequence of marriage, to be employed in recognised service.

The Board of Education have issued forms to be filled up by teachers who desire to have their service treated as recognised service or qualifying service under this Act. There are separate forms for men and women teachers. It is intended that these forms should be filled up and returned to the Board of Education during the teacher's period of service; and the teacher is required to certify that the state-

ments he makes in the form are correct to the best of his knowledge and belief.

As to the manner in which and the time within which an application for a Superannuation Allowance or a Gratuity is to be made, Rule 15 *provides as follows,—*

15. (1.) An application for a superannuation allowance or gratuity shall be made not later than six months after the date from or on which it may be granted, but if the application is not made within this period the Board may, in the case of an annual superannuation allowance, grant it as from the 1st of January, 1st of April, 1st of July or 1st of October next after the application, and in the case of any other allowance or gratuity, if they think proper, extend the period.

(2.) An application for a superannuation allowance or gratuity shall be made to the Board and shall be accompanied by full particulars of the teacher's service and by such other particulars as are necessary to substantiate the claim to the allowance or gratuity.

(3.) An application for a superannuation allowance or gratuity based on the permanent incapacity of a teacher through infirmity of mind or body to serve efficiently as a teacher in recognised service shall be accompanied by a medical certificate from a medical officer nominated by the Board, unless the Board are satisfied in some other manner that the teacher is permanently incapacitated as aforesaid and that it is inexpedient or impracticable to conduct a special medical examination.

(4.) The Board may require a teacher to furnish such evidence in support of his application as they think necessary, and if they are not satisfied from the medical certificate that the teacher is permanently incapacitated, may require further evidence in support of the application.

As to the manner in which and the time within which any application for the recognition of service as qualifying service is to be made to the Board, Rule 16 *provides as follows,—*

16. (1.) Any application for recognition of service as qualifying service shall be made in writing to the Board and shall give full particulars of the character of the service and of the period over which it extended The Board may require a teacher to furnish such evidence as to the duration and character of the service as they think necessary.

(2.) Any application for the recognition of service as qualifying service in respect of a period before the 1st April, 1919, shall, if the teacher is in recognised service on the 1st April, 1919, be made within six months after that date.

(3.) Any application for the recognition of service as qualifying service by a teacher who is not in recognised service on 1st April, 1919, shall be made within three months after his first employment in recognised service subsequent to that date.

(4.) Any application for the recognition of service as qualifying service by a teacher who leaves recognised service in order that he may enter qualifying service shall be made within three months after his entry into qualifying service.

(5.) In any other case the application shall be made as soon as conveniently may be and the Board may refuse to entertain the application if, owing to delay on the part of the teacher it is, in their opinion, impossible to produce satisfactory evidence of the duration and character of the service.

Gratuities in cases of Short Service.

2. Where a teacher who is not qualified for the grant of an annual superannuation allowance has been employed in

recognised service for not less than the prescribed period after the commencement of this Act and within the prescribed period before the date on which he applies for a gratuity under this section and has, in the opinion of the Board, become permanently incapable through infirmity of mind or body of serving efficiently as a teacher in recognised service, the Board may, subject to the provisions of this Act (including any rules made thereunder), grant to him a gratuity of an amount not exceeding one-twelfth of his average salary in respect of each completed year of recognised service.

Note 2.—Compare sec. 2 of the Elementary School Teachers (Superannuation) Act, 1898. The provision made in that Act for incapacitated teachers appears to be less favourable than the provision made in sec. 2 above. The qualification for the grant of an annual superannuation allowance is stated in sec. 1.

"Recognised service" is defined in sec. 18 on p. 522.

By Rule 8 of the Rules, the prescribed period within which a teacher must be employed in recognised service before the date on which he applies for gratuity under sec. 2 is the period of six months immediately preceding the application.

By Rule 10 the prescribed period during which a teacher must have been employed in recognised service after the commencement of this Act, in order that he may qualify for a gratuity under sec. 2, is the period mentioned in Rule 7, which is set out in note (4) to sec. 1, pp. 503-4.

The question whether a person has become permanently incapable . . . of serving as a teacher in recognised service is one for the determination of the Board of Education, and their decision will ordinarily be final for the purpose of granting (or not granting) a gratuity under the section. A person may recover his capacity and be re-employed: His position in that case will be as laid down in sec. 5.

No person is entitled to claim a gratuity as an absolute right (sec. 6).

Rule 15 prescribes the manner in which an application for a gratuity is to be made. The rule is set out in the note to sec. 1, p. 505.

The expresion "average salary" is defined in sec. 18, on p. 523.

Death Gratuities to Legal Representatives of deceased Teachers.

3.—(1.) Subject to the provisions of this Act (including any rules made thereunder), the Board may grant to the legal personal representatives of any teacher who has been employed in recognised service for a period amounting in the aggregate to five years, of which not less than the prescribed part has been subsequent to the commencement of this Act, and dies while in recognised service, a death gratuity of an amount not exceeding the average salary of the teacher or the amount of the additional allowance which the Board might have granted to him if at the date of his death he had become permanently incapable of serving efficiently as a teacher in recognised service, whichever is the greater:

Provided that a death gratuity shall not be granted in

respect of any teacher who at the commencement of this Act, was of the age of sixty years or upwards, or who fails to satisfy the Board in the prescribed manner that he was not of impaired health at the commencement of this Act.

(2.) Where a teacher dies after having become qualified for the grant of an annual superannuation allowance, and the aggregate amount of the sums received or receivable by him up to the time of his death on account of annual superannuation allowance and additional allowance is less than the amount of his average salary, the Board may grant to his legal personal representatives a supplementary death gratuity not exceeding the difference between the amount of the average salary and the said aggregate amount.

Note 3.—As to proving the title of the legal personal representatives of the deceased teacher, see sec. 8 on p. 513.

The expression "recognised service" is defined in sec. 18, p. 522.

By Rule 10 of the Rules the period during which a teacher must have been employed in recognised service after the commencement of this Act (1st April, 1919) in order that a death gratuity may be granted to his legal personal representatives under sec. 3, is the period mentioned in Rule 7, noted under sec. 1, p. 503. In order that a teacher's legal personal representatives may be entitled to apply for a death gratuity in respect of him the teacher must supply to the Board of Education the evidence specified in Rule 11 as amended in 1919:

Rule 11 is as follows:—

11. (1.) In order that a death gratuity may be payable in respect of a teacher, a teacher who was under sixty years of age on 1st April, 1919, shall satisfy the Board that he was not of impaired health on that date by making and sending to the Board a declaration on a Form provided by the Board containing such information as the Board may require for the purpose.

(2.) If the teacher has attained the age of fifty-five years on 1st April, 1919, but has not attained the age of sixty years, he shall also submit himself to medical examination by a medical officer nominated by the Board.

(3.) The Board may require the declaration to be accompanied by a certificate or certificates from the employer of the teacher, or such other person as the Board may approve, as to the accuracy of the statements contained in the declaration.

(4.) If the Board are not satisfied that the teacher was not of impaired health as aforesaid, they may require the teacher to submit himself to medical examination or further medical examination by a medical officer nominated by the Board, or require the production of such further evidence as they think necessary.

(5.) A teacher who is in recognised service on 1st April, 1919, shall satisfy the Board under this Rule before 1st October, 1919, and a teacher who is not in recognised service on 1st April, 1919, but subsequently re-enters recognised service shall so satisfy the Board not later than three months after his re-entry into recognised service.

By an amending Rule made on the 2nd October, 1919, under sec. 15 of this Act, by the Board of Education with the consent of the Treasury it is provided as follows,—

1. Where, owing to his death or some other cause which appears to the Board to be adequate, a teacher has not been able to satisfy

the Board, in the manner prescribed by Rule 11 of the School Teachers Superannuation Rules, 1919, that he was not of impaired health on the 1st April, 1919, the Board may be satisfied by the production of such evidence as may appear to them sufficient for the purpose.

2. This Rule may be cited as the School Teachers Superannuation (Amending) Rule, 1919.

The amount of "additional allowance," which might have been granted to the deceased teacher if at the date of his death he had become permanently incapable of serving efficiently as a teacher in recognised service, is indicated in sec. 1 (1) (*b*) and sec. 1 (2) (*b*) above.

Death gratuities cannot be granted in respect of any teacher who on the 1st April, 1919, was of the age of sixty years or upwards; or who fails to satisfy the Board that on that date he was not of impaired health. Forms have been issued by the Board to enable teachers to make the necessary declaration of health. By Rule 16 of the Rules any application for the recognition of service in respect of a period before 1st April, 1919, must, if the teacher was in recognised service on that date, be made before the 1st October, 1919.

If on the 1st April, 1919, a teacher was between the ages of 55 and 60 he must supply a certificate of health on "Form 6 Pen," signed by a medical officer nominated by the Board. Such a teacher as well as all other teachers under 60 on the 1st of April, 1919, were required to make a declaration of health on "Form 5 Pen," and get a certificate by some person specified in the form that the particulars were correct so far as the certifying person was able to verify them.

A list of the Medical Officers recognised under this Act for any particular area will be supplied on application to the Board of Education.

"Service" under the Act does not include service after the age of sixty-five years, unless the Board in any special case allow such service to be treated as service for any of the purposes of the Act (sec. 18).

"Average salary" is calculated as indicated in sec. 18, on p. 523.

Disqualification for Benefits under Act.

4. The following teachers, that is to say—

(i.) persons being or having been certificated teachers whose certificates had expired before the commencement of this Act, or who were at that date in receipt of any allowance under the Act of 1898; and

(ii.) teachers who enter on recognised service for the first time after the commencement of this Act, and do not satisfy the Board in the prescribed manner of their physical capacity; and

(iii.) certificated teachers who give notice in the prescribed manner and within the prescribed time that they do not accept this Act;

shall not be entitled to any benefits under this Act.

Note 4.—Three groups of teachers are dealt with in this section: (*a*) persons who had ceased to be certificated teachers before the 1st April, 1919; including those who on that date were in receipt of allowances under the Act of 1898; (*b*) persons who were certificated teachers on the 1st April, 1919; and (*c*) persons who first enter on recognised service after that date.

Persons in group (*a*) cannot receive benefits under this Act. A teacher in group (*b*) may receive benefits under this Act, unless, before

the 1st July, 1919, he gave to the Board of Education notice in writing, in manner required by Rule 13, that he did not accept the School Teachers (Superannuation) Act, 1918. A teacher in group (*c*) becomes entitled to benefits under the Act if he complies with Rule 12 of the Rules,—

By Rule 12 (1) a teacher who enters on recognised service for the first time after 1st April, 1919, shall, for the purpose of satisfying the Board of his physical capacity, be examined within three months after his entry on recognised service by a medical officer nominated by the Board, unless the Board are already satisfied of his physical capacity.*

(2.) If the Board on receiving the report of the medical officer are not satisfied of the physical capacity of a teacher, they may call for such further medical evidence as they consider desirable.

Power of Certificated Teachers to give notice that they do not accept the Act. (*Sec.* 4 (iii.).)

Rule 13 (1.) Any Certificated Teacher who does not accept the School Teachers (Superannuation) Act, 1918, shall give notice in writing to the Board that he does not accept it before the 1st day of July, 1919, in the words following :—

"I† whose registered number as a Certificated Teacher is‡ hereby give notice that I do not accept the School Teachers (Superannuation) Act, 1918."

(2.) The Board shall give Certificated Teachers three months' notice of their option not to accept the School Teachers (Superannuation) Act, 1918, either by advertisement in the newspapers or through the persons employing the teachers, or by notice to individual teachers or in such other manner as the Board consider best calculated to give Certificated Teachers notice of their option not to accept the Act.

Re-employment of Teachers.

5.—(1.) If a teacher in receipt of an annual superannuation allowance is again employed at whatever age as a teacher in recognised service, the allowance shall cease as from the date on which he becomes so employed, without prejudice, however, to the power of the Board under this Act to grant to him subsequently a fresh annual superannuation allowance.

(2.) A teacher who has been granted an additional allowance or a gratuity and who is again employed in recognised service shall, on his subsequent retirement from recognised service, be qualified, subject to the provisions of this Act (including any rules made thereunder), for the grant of an additional allowance or gratuity in respect of each completed year of recognised service subsequent to the date on which he becomes so employed:

Provided that the amount receivable in any such case by way of additional allowance or gratuity shall not exceed a sum equal to the difference between the amount which might

* In all ordinary cases the Board regard a teacher who has passed the medical examination prescribed for the purpose of his recognition as a certificated teacher as having already satisfied them of his physical capacity.

† Here insert full name.

‡ Here insert registered number.

have been granted by way of additional allowance or gratuity in respect of the aggregate service of the teacher and the sum already received.

(3.) Where a teacher who has been granted an additional allowance or gratuity is again employed in recognised service, the Board may, subject to the provisions of this Act (including any rules made thereunder), grant a death gratuity to his legal personal representatives:

Provided that the amount of any such death gratuity shall not exceed a sum equal to the difference between the amount which might have been granted by way of death gratuity in respect of the aggregate service of the teacher and the amount paid by way of additional allowance or gratuity.

(4.) If a teacher of any age in receipt of an annual superannuation allowance is employed in any Government employment or in the employment (otherwise than as a teacher in recognised service) of a Local Education Authority, then, if the salary and emoluments received by him in respect of the employment are not less than his salary at the date on which he ceased to be in recognised service, the superannuation allowance shall be suspended during the employment, and if they are less than that salary then only so much of the allowance shall be paid to him as with the salary and emoluments of the employment is equal to that salary.

For the purposes of this section the expression "Government employment" means any employment the remuneration of which is paid out of the Consolidated Fund or out of moneys provided by Parliament.

Note 5.—Three kinds of grant payable to teachers who have ceased to be employed in that capacity are dealt with in this section:—(1.) the annual superannuation allowance provided for in sec. 1 (2) (*a*); (2.) the additional allowance or lump sum provided for in sec. 1 (2) (*b*) which is payable to teachers who receive an annual superannuation allowance; and (3.) the gratuity provided in sec. 2 for incapacitated teachers who are not qualified to receive an annual superannuation allowance. If the teacher is re-employed whether as a teacher in recognised service, or under government, or in the service of a Local Education Authority otherwise than as a recognised teacher, his superannuation will cease in the first case and may be proportionately reduced in the second and third cases; but on his ceasing to be re-employed a fresh superannuation allowance may be granted to him in the first case; and if his additional service justifies it, the superannuation allowance may be enlarged and a further additional allowance may be made to him. In the second and third cases his original superannuation allowance will be revived, but it cannot be increased by counting the period of his re-employment under the government or with a Local Education Authority.

If the teacher re-employed in recognised service had received a gratuity in respect of previous employment, he may, on his retirement from that re-employment, be qualified for the grant of an additional gratuity, subject, however, to the proviso to sub-sec. (2) above. The original gratuity under sec. 2 would have been granted on the view that the teacher was not then qualified to receive an annual

superannuation allowance. If, in consequence of his re-employed service, he brings himself within sec. 1 of the Act so as to be qualified for a superannuation allowance, the question will arise whether the fact that he has received a gratuity under sec. 2, coupled with the provision in sub-sec. (2) of sec. 5, will prevent him from receiving the annual superannuation allowance and will entitle him only to the further gratuity mentioned in sub-sec. (2). It is submitted, however, that in the circumstances he should be granted the annual superannuation allowance under sec. (1) as well as the additional allowance under sec. 1 (2) (*b*); the latter being adjusted by excluding the amount of the gratuity already paid to him. Under sec. 6 the decision of the Board of Education on this question will be final.

As to the meaning of the expression "emoluments" in sub-sec. (4), see the notes on p. 434.

No Claim to Superannuation Allowances or Gratuities as of Right.

6. Nothing in this Act shall give any person an absolute right to any superannuation allowance or gratuity, and, except as in this Act provided, the decision of the Board on any question which may arise as to, or which may affect, the application of this Act to any person, or the qualification for any superannuation allowance or gratuity, or the amount of any superannuation allowance or gratuity, or on any question which may arise as to the amount of the average salary of any teacher, shall be final.

Note 6.—In certain cases Deferred Annuities under the Act of 1898, can be claimed as of right. After the 1st April, 1919, if they are payable, they are, by sec. 12 (3) of the Act, to be paid by the National Debt Commissioners as the Treasury direct.

"*Except as in this Act provided*":—The approval of the Treasury is required in cases arising under sec. 18 (vii.) of this Act where service in any school, other than schools specified in paras. (i.) to (vi.) of sec. 18. is to be accepted as recognised service for the purpose of superannuation under this Act.

The employment which is to be included in the expression "qualifying service," under sec. 18 of this Act, whether in the capacity of a teacher or otherwise, for the purpose of qualifying for a superannuation allowance, is to be determined by the Treasury on the recommendation of the Board of Education. As to this see page 622.

Subject to the above provisions in the Act, the decisions of the Board of Education are final on all questions of superannuation arising under this Act. See sec. 10 as to their power to refuse, reduce, or suspend any allowance or gratuity.

Payment and Assignment of Allowances.

7.—(1.) Every annual superannuation allowance shall be payable quarterly at such times and in such manner as the Treasury may determine.

(2.) Every assignment of or charge on and every agreement to assign or charge any superannuation allowance or gratuity shall be void, and on the bankruptcy of a person entitled to any such allowance or gratuity the allowance or gratuity shall not pass to any trustee or other person acting

on behalf of the creditors, but this provision shall be without prejudice to any order of the Court made under section fifty-one of the Bankruptcy Act, 1914, or under any corresponding enactment in Scotland or Ireland.

Note 7.—(1) At the end of each quarter, if the pensioner has been re-employed as a teacher, or been in the employment of the government or of any Local Education Authority, or if he has been wholly or partly maintained out of public funds, he must furnish full particulars of his re-employment to the Board of Education in writing. If he has not been re-employed in any such capacity, he must make out, after the 31st March, 30th June, 30th September or 31st December, as the case may be, a declaration, on Form 1034 F setting out that he is entitled to a superannuation allowance at the rate of £ per annum for the Quarter ended . If he is entitled to an additional allowance or gratuity he must fill up Form 1033 F. These forms are supplied by the Board of Education and when completed by the claimant they must be returned to that Board.

The statement must be signed in the presence of one of the persons specified in the list on the back of the form, which includes head teachers of public elementary and secondary schools. The person so signing has to declare that he believes the declarant to be the grantee named in the declaration.

(2.) The effect of sub-sec. (2) is to render void any attempt of the pensioner to assign to another person or to charge his superannuation allowance or gratuity, or any part of it, as security for a loan of money, or for any other purpose. It also prevents the allowance or gratuity from passing to the trustee in the event of the pensioner becoming bankrupt. But it does not prevent the trustee in the bankruptcy from applying to the Court to make an order for the payment to him of the allowance or gratuity, or some part thereof, to be applied by him in such manner as the Court may direct.

Sec. 51 of the Bankruptcy Act, 1914, is as follows,—

(1.) "Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section, the court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.

(2.) "Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Treasury, the court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the court may direct.

(3.) "Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited."

Sec. 51 of the Bankruptcy Act, 1914, is a re-enactment, without alteration of sec. 53 of the Bankruptcy Act, 1883.

When an order was made under sec. 53 (2) of the Bankruptcy Act, 1883, the Court usually gave the creditors the surplus of the bankrupt's

income, or salary, after allowing him sufficient to maintain him and his family accordingly to his condition in life : See *Ex parte Huggins*, L. R. 21 Ch. D. 85, and In *re Rogers* (1894), 1 Q.B. 425.

Presumably the same rule will be followed in the case of the superannuation allowances of school teachers.

Payment without Probate in certain cases.

8. Where any sum not exceeding one hundred pounds is payable under this Act in respect of a superannuation allowance or gratuity granted to a deceased teacher or of a gratuity granted to the legal personal representatives of a deceased teacher, probate or other proof of title of the legal personal representatives may be dispensed with, and the sum may be paid or distributed to or among the persons appearing to the Board to be beneficially entitled to the personal estate of the deceased teacher, or to or among any one or more of those persons, or in the case of the illegitimacy of the teacher or of his children to or among such persons as the Board may think fit.

Note 8.—If the deceased teacher has left a will the probate of the will (or of letters of administration as the case may be) is the proper proof of the title of his legal personal representatives. If, therefore, probate has been granted, it should be forwarded to the Board of Education in connection with any claim in respect of any portion of a superannuation allowance that may be due or of any gratuity to be granted to the personal representatives of the deceased. The Board of Education, however, are given by the section full power to deal with the money due, or to be granted. They may, and they probably will ask for the probate. They may also dispense with it; and it is within their power to require such evidence as may seem to them to be necessary, as to the persons who claim to be entitled to the personal estate of the deceased teacher and the grounds of their claims respectively; and the Board may distribute among those persons, who may appear to be beneficially entitled, or to one or more of them, as the Board think fit, the amount due or to be granted. In the case of illegitimately of the teacher or his children, the Board may distribute among them as the Board think fit.

Provision as to Allowance Payable to Persons Mentally Disabled.

9. Where any sum in respect of a superannuation allowance or gratuity is payable to any person under this Act, and the person to whom the sum is payable is certified by a justice or minister of religion and by a medical practitioner to be unable by reason of mental disability to manage his affairs, the Board may pay so much of the said sum as they think fit to the institution or person having the care of the disabled person, and may pay the surplus, if any, or such part thereof as the Board think fit, for or towards the maintenance and benefit of the wife or husband and relatives of the disabled person.

Note 9.—Rule 17 of the Rules is as follows,—

17. Where a teacher becomes a pauper lunatic or is otherwise wholly or partly maintained out of public money, so much of any superannuation allowance or gratuity may be refused or suspended as the Treasury may consider necessary in order that the cost of maintaining the teacher may not fall on public funds.

Provisions as to Refusal, Reduction, or Suspension of Allowance or Gratuity.

10.—(1.) Where a teacher who has applied for or who is in receipt of any superannuation allowance or gratuity, or in respect of whom a death gratuity has been applied for, has been guilty of such misconduct as, in the opinion of the Board, has rendered him, or would, if he had continued to serve as a teacher, have rendered him, unfit to remain in service as a teacher, the Board may, as the case may be, either refuse, grant at a reduced rate, reduce, or suspend the allowance or gratuity, and the Board may grant a superannuation allowance or gratuity at a reduced rate where they are of opinion that the defaults or demerits of the teacher to or in respect of whom it is granted justify a reduction.

Where the Board, in pursuance of the foregoing provision, have refused, granted at a reduced rate, reduced or suspended a superannuation allowance or gratuity, they may at any time thereafter, if they are of opinion that for any reason it is proper so to do, either grant the allowance or gratuity or pay it in full or remove the suspension.

(2.) No superannuation allowance or gratuity shall be payable to any teacher who is not a British subject, and no death gratuity shall be payable in respect of any teacher not being a British subject.

Note 10.—See sec. 6 above, which makes it clear that no person has any absolute right to any superannuation allowance or gratuity under this Act and that the decision of the Board of Education on any point that may arise under sub-sec. (1) of sec. 10 is final. As to sub-sec. (2), if in connection with an application for an allowance, etc., any question should arise as to whether a teacher is or is not a British subject, the question would be determined in the first instance by the Board; but it is suggested that a party aggrieved by the Board's decision may, in a suitable case, obtain the decision of a court of law on this point.

Penalty for False Representation and Fraud.

11.—(1.) If any person—

(*a*) for the purpose of obtaining for himself or any other person any superannuation allowance or gratuity personates any person or makes any false certificate, false representation, or false statement, or makes use of any false certificate or document, false representation, or false statement, knowing the same to be false; or

(*b*) by means of any such false certificate, false document, false representation, or false statement, or by personation or other fraudulent means obtains or attempts to obtain for himself or any other person any superannuation allowance or gratuity,

he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, and on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding twenty-five pounds.

(2.) Any penalty for any offence under this section may be in addition to any refusal, reduction or suspension of the allowance or gratuity.

(3.) Any reference in this section to the obtaining of a superannuation allowance or gratuity, shall include a reference to the obtaining of an increase of a superannuation allowance or gratuity, and to the preventing, or the obtaining the rescission of, the suspension of a superannuation allowance, and the obtaining of any sum in respect of a superannuation allowance or gratuity.

Note 11.—(1.) This section is similar in terms to sec. 10 of the Elementary School Teachers (Superannuation) Act, 1898, but the present section does not in terms provide for the award of hard labour.

(2.) As to the refusal, reduction, or suspension of any allowance or gratuity, see the last preceding section.

Provisions with Respect to Deferred Annuities under the Act of 1898.

12. (1.) No teacher, other than a teacher who is not entitled to benefits under this Act, shall make any contributions towards a deferred annuity under the Act of 1898 in respect of service after the commencement of this Act, but where any teacher has made any such contributions in respect of service before that date he shall, notwithstanding that he thereafter ceases to make contributions, be entitled to a deferred annuity in respect of those contributions.

(2.) As from the commencement of this Act, the deferred annuity fund established under the Act of 1898 shall cease to exist, and all moneys then belonging to that fund, and all moneys thereafter received by the National Debt Commissioners on account of contributions towards deferred annuities under the Act of 1898, shall be applied by the National Debt Commissioners in purchasing, redeeming or paying off such descriptions of National Debt as the Treasury may direct, and all securities then belonging to that fund and all securities which may thereafter be acquired out of the moneys aforesaid shall be cancelled in such manner as the Treasury may direct.

(3.) All deferred annuities under the Act of 1898 payable

at any time after the date of the commencement of this Act shall be calculated in accordance with the tables in force at that date, and shall, in lieu of being paid out of the said deferred annuity fund, be charged on the Consolidated Fund and the growing produce thereof, and shall be paid by the National Debt Commissioners in such manner as the Treasury direct.

(4.) The provisions of the Act of 1898 relating to deferred annuities shall have effect as if for references to contributions to the deferred annuity fund there were substituted references to contributions towards deferred annuities, and as if for references to payment out of the deferred annuity fund there were substituted references to payment by the National Debt Commissioners, and the following provisions of the Act of 1898, that is to say, the words "towards the payment of disablement allowances" in section two, sub-section (2.) of section three from the words "and be" to the end of the sub-section, sub-sections (3), (4), (5) and (6) of section three, and section four, shall be repealed.

Note 12.—(1.) A teacher who before the commencement of this Act had contributed to the deferred annuity fund under the Act of 1898, and then became entitled to benefits under this Act, ceased as from the 1st April, 1919, to contribute to the deferred annuity fund. If when he retires from service under a Local Education Authority he has qualified for superannuation allowance in accordance with the requirements of sec. 1 of the Act, of 1918, he will be entitled to receive,

(*a*) A superannuation allowance not exceeding one-eightieth of his average salary for each completed year of recognised service, or one half of his average salary, whichever is the less; and

(*b*) The additional allowance provided for in sec. 1 (2) (*b*) of the Act of 1918; and

(*c*) In respect of his contributions under the Act of 1898 a deferred annuity calculated according to the tables in force immediately before the 1st April, 1919.

(2.) Any contributions payable by teachers towards deferred annuities, after the 1st April, 1919, should be paid to the Board of Education, as required by sec. 3 of the Act of 1898, and that Board will pay them to the National Debt Commissioners in order that the contributions may be dealt with as provided in sub-sec. (2) above.

(3.) The tables in force at the commencement of this Act will be found at p. 494.

Amendment of Elementary School Teachers (Superannuation) Acts, 1898 to 1912.

13.—(1.) The provisions of the Act of 1898 with respect to the grant of superannuation and disablement allowances shall, as from the commencement of this Act, cease to have effect as regards teachers entitled to benefits under this Act.

(2.) Notwithstanding anything in paragraph (*a*) of subsection (2) of section one of the Act of 1898 (which relates

to teachers' certificates), the Board may in any case in which they think proper so to do continue in force till the commencement of this Act any certificate which would otherwise expire in the period between the passing and the commencement of this Act.

(3.) The words " or become in such a position as not to " be in pecuniary need of the allowance " in sub-section (3) of section two of the Act of 1898 (which relates to the suspension, &c., of disablement allowances), shall be repealed.

(4.) Sub-section (2) of section two of the Elementary School Teachers (Superannuation) Act, 1912 (which relates to the reconsideration of disablement allowances), shall have effect as if the word " more " were therein substituted for the word " less."

(5.) Service after the commencement of this Act in an elementary school (not being a public elementary school) recognised by the Board as a certified efficient school shall not, unless the service is recognised service within the meaning of this Act, be recorded by the Board under the Act of 1898.

Note 13.—The date of the commencement of this Act is the 1st April, 1919: It was passed on the 21st November, 1918.

Superannuation allowances are provided for in sec. 1 of the Act of 1898, and disablement allowances in sec. 2.

Teachers who are not entitled to the benefits of this Act are those indicated in sec. 4 above.

Recognised service is defined in sec. 18 of this Act (see p. 522). Recorded service is defined in sec. 1 (5) of the Elementary School Teachers (Superannuation) Act, 1898 (p. 479).

Provisions with Respect to Local Pensions Schemes.

14.—(1.) The following provisions shall have effect with regard to pensions schemes:—

(*a*) A teacher who is not subject to a pensions scheme at the commencement of this Act shall not, while he is in recognised service, be subject to, or pay or be required to pay any contributions under, such a scheme:

(*b*) Where any pensions scheme applies to a teacher who is in recognised service at the commencement of this Act or who thereafter enters recognised service, he may, if he so thinks fit, make in the prescribed manner and within the prescribed time a declaration to the effect that he desires to withdraw from the scheme, and if he so makes such a declaration the scheme shall as from the date of the commencement of this Act or the date on which he entered recognised service, as the case may be, cease to apply to him:

(*c*) Where a person to whom a pensions scheme applies as aforesaid does not withdraw therefrom in accordance with the provisions of this section he shall not be entitled to any benefits under this Act:

(*d*) Where a teacher withdraws from a pensions scheme in accordance with the provisions of this section, he shall be entitled to be recouped by the persons having the management of the scheme in respect of his past contributions under the scheme in such manner and upon such terms as may, subject to the approval of the Treasury, be agreed upon between him and those persons, or in default of agreement, may be determined by the Treasury.

(2.) In this section the expression "pensions scheme" means any scheme or arrangement established or carried on, whether under any Act of Parliament or otherwise, by a council having powers under the Education Acts or the governing body of a school under which payments by way of contribution to a fund or otherwise are made either by the council or governing body, as the case may be, or jointly by the council or governing body, as the case may be, and persons employed as teachers, with a view to providing benefits for those persons on disablement, retirement, attainment of any specified age, or death.

Note 14.—This Act came into operation on the 1st April, 1919. Prior to that date various arrangements for conferring pensions were or had been in operation. There was the deferred annuity system under the Act of 1898, to which those who benefited had to contribute. There were a few Local Acts under which contributory schemes had been made; there were pensions schemes established by governing bodies and there were private contractual arrangements under which the local authority contracted with the teachers to establish and manage a superannuation fund for their benefit, such fund being provided by contributions from the officers and teachers out of their salaries (cf. *Phillips* v. *London School Board* (1898), 2 Q. B. 447); and there were the pensions formerly provided by the Day School Code. All these arrangements are intended to be replaced by the provisions of the Act of 1918. It is optional as regards recognised serving teachers who on the 1st April, 1919, were under pensions schemes or the Act of 1898. The position under the new Act is better for the teacher than that under the Act of 1898, and as from that date no new teacher is allowed, while in recognised serivce, to contribute towards any other scheme. Teachers in office on that date were allowed to withdraw from or to remain under the Act of 1898—*i.e.* under the "deferred annuity" scheme. As regards any pensions scheme as defined in sub-sec. (2), to which they contributed, para. (*b*) of sec. 14 provides that they may withdraw from it, in which case they will be entitled under para. (*d*) to be recouped by the managers of the scheme for their past contributions.

On the 1st January, 1919, the Board of Education issued a Circular (No. 1082) to Local Education Authorities and Governing Bodies of schools with which they enclosed copies of a notice to teachers and Declaration of Withdrawal from a Pensions Scheme, and they pointed out that under the Rules the declaration must be made before the 1st

July, 1919, by all teachers who were in office before 1st April, 1919. The Board also suggested in January, 1919, that persons having the management of pensions schemes should take steps without delay to come to an arrangement with the teachers concerned, as to the terms on which recoupment should be made in respect of their past contributions under the scheme, in order that the matter might be submitted by the Board to the Treasury before the 1st April, 1919.

It was also pointed out that teachers who enter service after the 1st April, 1919, who desire to withdraw from pensions schemes must do so within three months of the date of entry.

Rule 14 of the Rules provides as follows,—

14. (1.) A teacher who is in recognised service on the 1st day of April, 1919, or who thereafter enters recognised service shall, if he thinks fit to withdraw from a Pensions Scheme, sign a declaration in duplicate in the form contained in the Schedule hereto that he desires to withdraw from the Scheme. One copy of the declaration so signed shall be forwarded by him to the Board and the other copy to the persons having the management of the Scheme. Any such declaration shall be made in the case of a teacher who is in recognised service on the 1st April, 1919, before the 1st day of July, 1919, and in the case of a teacher who enters recognised service after the 1st April, 1919, within three calendar months after his entry into service.

(2.) The Board shall give three months' notice to teachers of their right to withdraw from a Pensions Scheme either by advertisement in the newspapers or through the persons having the management of the scheme or by notice to individual teachers or in such other manner as the Board consider best calculated to bring to the notice of the teachers affected by Pensions Schemes their right to withdraw from those schemes.

SCHEDULE.

BOARD OF EDUCATION.

Declaration of Withdrawal from a Pensions Scheme.

I (1) of (2) being a teacher employed at (3) (whose registered number as a Certificated Teacher is (4)) hereby declare that I desire to withdraw from the Pensions Scheme established or carried on by (5)

Signature.....

Date.....

NOTE.—This Form should be signed in duplicate and one copy should be sent to the Board of Education and the other to the persons having the management of the Pensions Scheme.

1. Here insert name in full. 2. Here insert address. 3. Here insert name of school. 4. This should only be put in in the case of a certificated teacher. 5. Here insert name of Local Education Authority or other Body having the management of the Scheme.

Power to make Rules.

15.—(1.) The Board may, with the consent of the Treasury, make rules for carrying this Act into effect, and those rules may in particular provide—

(*a*) For the manner in which, and the time within which, an application for a superannuation allowance or a gratuity is to be made (*see Rule* 15, *p.* 505) :

(*b*) For the notice to be given to teachers of their option not to accept this Act, and the manner in which and time within which that option is to be exercised (*see Rule* 13, *p.* 509) :

(*c*) For the notice to be given to teachers of their right to withdraw from a pensions scheme (*see Rule* 14 (2), *p.* 519) :

(*d*) For the manner in which and the time within which any application for the recognition of service as qualifying service is to be made to the Board (*see Rule* 16, *p.* 505) :

(*e*) For the refusal or suspension of all or any part of a superannuation allowance or gratuity if the person to whom it is payable is wholly or partly maintained out of any public funds (*see Rule* 17, *p.* 514) :

(*f*) For allowing any such service as may be recorded in the case of a certificated teacher by virtue of the provisions of the Elementary School Teachers (War Service Superannuation) Act, 1914, to be treated in the case of any teacher as recognised or qualifying service for the purpose of this Act, and for determining what salary a teacher is for the purpose of computing the average salary to be regarded as receiving during any such service (*see Rules* 18 *and* 19, *p.* 521) :

(*g*) For determining what salaries teachers are to be treated as receiving for the purposes of this Act during any periods of absence on sick leave, and how far such periods are to be treated as service for the purposes of this Act (*see Rule* 20, *p.* 521) :

(*h*) For prescribing anything which under this Act is to be prescribed.

(2.) All rules made under this section shall be laid as soon as may be before both Houses of Parliament.

Note 15.—Rules were made under this section and dated 17th March, 1919.

1. These Rules may be cited as the School Teachers Superannuation Rules, 1919.

2. In these Rules, unless the context otherwise requires, the expression "the Act" means the School Teachers (Superannuation) Act, 1918. Other expressions have the same meaning as in the Act.

3. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

4. The Board may alter or extend any time within which anything is required to be done under these Rules, if they consider that there are reasonable grounds for so doing.

5. Without prejudice to the other provisions of these Rules, no service rendered by a teacher while under the age of eighteen years, shall be recognised by the Board for the purposes of the Act.

6. The fees and all other expenses incurred by any person in connection with a medical examination under these Rules, or in satisfying the Board as to the claim of any person to a superannuation allowance or gratuity, shall be paid by or on behalf of the person concerned.

Rules 7 to 17 are set out under the sections of the Act to which they specially relate.

Rules 18 to 20 are as follows:—

The determination of the salary of a teacher during war service. (*Sec.* 15 (1) (*f*).)

18. The salary which a teacher is to be regarded as receiving during any period of war service, which is treated as recognised service under these Rules, shall be such salary as in the opinion of the Board the teacher would have received if he had been employed as a teacher during his period of war service.

Recognition of war service as recognised or qualifying service. (*Sec.* 15 (1) (*f*).)

19. (1.) Service by a teacher in any of the naval or military forces of the Crown in the present war, or any service by a teacher in connection with naval or military operations in that war which the Board consider may properly be treated in the same manner as actual naval or military service, shall be treated for the purposes of the Act as recognised service if the Board are satisfied that the teacher was a certificated teacher at the date of such war service or was employed in recognised service immediately before the commencement of such war service as aforesaid, and, if it cannot be treated as recognised service, shall be treated as qualifying service.

(2.) Any period not exceeding twelve months during which a teacher, though not actually serving, is, as a result of his war service, prevented or hindered from procuring work as a teacher owing to injury, illness, or any other cause, may be treated for the purposes of the Act as if it were service by a teacher in the naval or military forces of the Crown in the present war.

The determination of salaries during sick leave and the treatment of sick leave as service for the purpose of the Act. (*Sec.* 15 (1) (*g*).)

20. (1.) The salary which a teacher is to be treated as receiving for the purpose of this Act during any period of absence on sick leave, which is treated as recognised service for the purpose of this Act, shall be the salary which, in the opinion of the Board, he would have received if he had not been absent on sick leave.

(2.) Absence on sick leave shall be treated as service subject to the following exceptions:—

(*a*) No such absence shall be treated as service unless it is approved by the authorities of the school and unless the authorities of the school, if so required, furnish the Board with satisfactory evidence on the subject.

(*b*) No such absence shall be treated as service after the teacher has in consequence of sickness been continuously in receipt of less than full pay for a period of six months.

(*c*) No such absence shall be treated as service during any period in which the teacher receives less than half pay.

(*d*) No such absence shall be treated as service after a teacher has been continuously absent on sick leave for twelve months.

(*e*) No such absence shall be treated as service if the teacher has during the four years immediately preceding the date of the absence been absent on sick leave for a period or periods which amount in the aggregate to one year.

(3.) For the purpose of this rule the Board may treat the whole

or any part of a school holiday or vacation as part of a continuous period of absence on sick leave.

Rules 21 to 24 will be found under sec. 18 below.

An Amending Rule was made on 2nd October, 1919, see p. 507.

Power of Governing Bodies to Comply with Conditions.

16. Notwithstanding any provision regulating the trusts or management of a school, the governing body of the school shall have power to fulfil any conditions which may be required to be fulfilled in order that service in that school may be recognised service for the purpose of this Act.

Note 16.—The principle involved in this section was recognised in sec. 99 of the Education Act, 1870. That section was applied so as to enable the fulfilment of any conditions, etc., under the Education Act, 1902, in order to obtain the parliamentary grant. The principal received further application in the Education (Compliance with Conditions of Grants) Act, 1919; p. 443.

Exemption from the Provisions of the National Insurance Act, 1911.

17. The employment in recognised service of any person who is entitled to benefits under this Act shall be deemed to be included among the excepted employments specified in Part II. of the First Schedule to the National Insurance Act, 1911.

Note 17.—See sec. 28 of the National Health Insurance Act, 1918, (p. 500), and the note thereto.

Interpretation.

18. In this Act, unless the context otherwise requires:—

The expression "service" means such service as is determined by the Board to be full-time service, but does not include service after the age of sixty-five years unless the Board in any special case allow such service to be treated as service for any of the purposes of this Act:

The expression "recognised service" means such service as is recognised by the Board for the purposes of this Act—

(i.) in the capacity of a certificated or uncertificated teacher, or a teacher of a special subject, in or in connection with a public elementary school:

(ii.) in the capacity of a certificated teacher or of a teacher of such other kind as may be prescribed in a school certified under Part IV. of the Children Act, 1908, under the Elementary Education (Blind and Deaf Children) Act, 1893, or under the Elementary Education (Defective and Epileptic Children) Act, 1899 (*see Rule* 21, *in note on p.* 524):

(iii.) in the capacity of a certificated or uncertificated teacher in a certified institution under the Mental Deficiency Act, 1913:

(iv.) in the capacity of a teacher in any other grant-aided school:

(v.) in the capacity of a certificated teacher during any period before the commencement of this Act in any service which in his case was recorded by the Board under the Act of 1898, and, in the case of a teacher who was employed in such service at the commencement of this Act, in the capacity of a certificated teacher in such service during any period after that date:

(vi.) in the capacity of a teacher in any school, not being an elementary school or a school certified under Part IV. of the Children Act, 1908, which though not grant-aided at the date of the service was grant-aided at the commencement of this Act, or becomes grant-aided within five years after that date:

(vii.) in the capacity of a teacher during any period after the commencement of this Act in any other school being a school which is approved by the Treasury for the purposes of this provision and which (*see Rule* 22, *in note on p.* 525)—

(*a*) is not conducted for private profit; and

(*b*) is open to inspection by the Board and is shown to the satisfaction of the Board to be efficient; and

(*c*) is unable out of its own resources to maintain a satisfactory pensions scheme; and

(*d*) satisfies such other conditions as may be prescribed as necessary or desirable for securing the public interest:

(viii.) subject to the prescribed conditions, in the capacity of a teacher during any period before the commencement of this Act in any other school, not being a school conducted for private profit, so, however, that not more than ten years service in any such school shall be recognised for the purposes of this Act (*see Rule* 23, *in note on p.* 525):

The expression "qualifying service" means any employment, whether in the capacity of a teacher or otherwise, which the Treasury, on the recommendation of the Board, may declare to be qualifying service for the purpose of calculating the period qualifying for a superannuation allowance:*

The expression "grant-aided school" means a place of education (other than a university or university college) in receipt of a grant, or in respect of which a grant is made, out of moneys provided by Parliament from or by the Board or from or by any public department whose place has been taken by the Board:

The expression "average salary" means the average amount of the teachers' salary (exclusive, unless the Board otherwise direct, of fees or other emoluments) in respect of his

*See the Treasury declaration printed on p. 662.

recognised service for the five years of recognised service (whether continuous or not), next preceding the commencement of an annual superannuation allowance or the grant of an additional allowance or gratuity, or if the teacher has not been employed in recognised service for five years, then the average amount of salary exclusive as aforesaid during the period for which he has been so employed: Provided that rules under this Act may prescribe as respects teachers in schools which are not grant-aided the maximum salary which may be taken into account in calculating the average salary (*see Rule* 24, *in note on p.* 526):

The expressions "certificated teacher" and "uncertificated teacher" mean respectively a teacher who is recognised under the regulations of the Board for the time being in force as a certificated teacher for public elementary schools, and a teacher who is so recognised as an uncertificated teacher for such schools:

The expression "the Act of 1898" means the Elementary School Teachers (Superannuation) Act, 1898, and includes a reference to that Act as amended by any subsequent enactment:

The expression "superannuation allowance" means any annual superannuation allowance, or additional allowance, payable under this Act, and the expression "gratuity" means any gratuity or any death gratuity payable under this Act:

The expression "prescribed" means prescribed by rules made under this Act.

Note 18.—The following rules relate to matters dealt with in sec. 18.

Recognised service in special schools. (*Sec.* 18.)

21. (1) The following service shall (in addition to service in the capacity of a Certificated Teacher) be recognised service, in a school certified under Part IV. of the Children Act, 1908:—

(i.) Service in the capacity of an uncertificated teacher.
(ii.) Service in the capacity of a teacher of special subjects.
(iii.) Service in the capacity of a superintendent.
(iv.) Service in the capacity of a teacher by any person who is recognised by the Home Office as duly qualified at the date of the service to teach in a school so certified.

(2.) The following service shall (in addition to service in the capacity of a Certificated Teacher) be recognised service in a school certified under the Elementary Education (Blind and Deaf Children) Act, 1893, or under the Elementary Education (Defective and Epileptic Children) Act, 1899:—

(i.) Service in the capacity of an uncertificated teacher.
(ii.) Service in the capacity of a teacher of special subjects.
(iii.) Service in the capacity of head teacher.
(iv.) Service in the capacity of a teacher by any person who is recognised by the Board as duly qualified at the date of the service to teach in a school so certified.

The prescribed conditions which a (1) *Secondary School must satisfy*

(1.) The case of schools other than Secondary Schools will be for separate consideration.

in order that service in it may be treated as recognised service under para. (vii.) of the definition of recognised service. (*Sec.* 18.)

22. In order that service in a Secondary School may be treated as recognised service under para. (vii.) of the definition of recognised service, the school must, in addition to satisfying the conditions prescribed by statute, comply with the following conditions:—

(1.) The school must be conducted by a Governing Body acting under and in accordance with a Trust Deed, Scheme or body of regulations which states its constitution and defines its functions.

(2.) The Board may, if they think fit, nominate such a number of persons, not exceeding three, as they think fit, to serve as additional members of the Governing Body of the school for such period and under such conditions as the Board may direct.

(3.) The Governing Body must make reasonable and suitable arrangements approved by the Board for co-operating in the public system of education by admitting as day pupils or boarders

(*a*) pupils nominated by Local Education Authorities, especially pupils who intend entering the teaching profession:

(*b*) pupils nominated by the Governing Bodies of schools in receipt of grants from the Board in order that they may receive the type of advanced or special education which is advantageous to them.

Such arrangements shall provide that in respect of pupils nominated under this Article no higher charge by way of fees or otherwise shall be made and no higher standard of attainment shall be required as a condition of admission than is made or required in respect of other pupils.

No pupil so nominated shall be rejected on the ground that he does or does not belong to any particular religious denomination, and a pupil admitted under this Article shall not be required to attend religious instruction or religious worship. Where a pupil does not attend the religious instruction and worship ordinarily attended by pupils in the school, reasonable opportunities shall be afforded him of attending religious instruction or worship elsewhere.

(4.) The Governing Body shall, if requested by the Board, make reasonable arrangements

(*a*) for admitting graduates for courses of training in accordance with the Board's regulations (2) designed for persons who intend to teach in secondary schools:

(*b*) for permitting teachers from other secondary schools to visit the school in accordance with the Board's regulations (2) for the purpose of studying method and gaining enlarged experience:

provided that the Board may, in place of such arrangements, accept proposals from the Governing Body for promoting the greater efficiency of secondary education in some other manner.

(5) The Governing Body shall furnish such returns and information as the Board require.

Conditions under which not more than ten year's service before the commencement of the Act may be recognised for the purposes of para. (viii.) *of the definition of recognised service in sec.* 18 *of the Act.*

23. Not more than ten years' service in such a School as is mentioned in para. (viii.) of the definition of recognised service in the Act may be treated as recognised service for the purposes of the Act, subject to the following conditions:—

(i.) No service shall be so recognised except service in England and Wales.[1]

(2.) The present Regulations of the Board relating to these matters are Art. 69 of the Regulations for the Training of Teachers and Art. 44 of the Regulations for Secondary Schools.

(ii.) No service shall be so recognised which, when added to any other period of recognised service by the teacher, causes the total period of recognised service to exceed thirty years.

(iii.) No such service shall be recognised unless the teacher has been employed in some other form of recognised service for not less than ten years.

(iv.) No such service shall be recognised unless the teacher has been employed after the 1st April, 1919, in qualifying service or in some other form of recognised service for such a period as is prescribed under sec. 1 (1) (*a*) (i.) (c) of the Act (*see Rule 7, on p.* 503).

(v.) No such service shall be so recognised in respect of any period during which the teacher was, in the opinion of the Board, subject to the provisions of any Pension Scheme, established with a view to providing benefits on disablement, retirement, attainment of any specified age, or death, whether it be such a Pensions Scheme as is mentioned in sec. 14 of the Act or not, unless the Board are satisfied that the teacher has derived, and will derive, no benefit from the Pensions Scheme except in respect of his own contributions.

As to *war service* being recognised or qualifying service (*see Rule* 19, *on p.* 521).

The maximum salary which may be taken into account in schools which are not grant-aided in calculating the average salary. (*Sec.* 18.)

24. In schools which are not grant-aided the maximum salary which may be taken into account in calculating the average salary of a teacher shall be £2,000.

In calculating the average amount of the salary of the headmaster or headmistress of a school, fees which are in the Union of the Board of Education capitation fees are not to be excluded. (Board of Education Order, 4th January, 1919).

As to *emoluments*, see note on p. 434.

Provision for Expenses.

19. The expenses incurred by the Board in carrying this Act into effect shall be defrayed out of moneys provided by Parliament.

Extent, Commencement, and Short Title.

20.—(1.) This Act shall not extend to Scotland or Ireland.

(2.) The Board may, with the consent of the Treasury, make orders extending any of the provisions of this Act, subject to such modifications as may appear to the Board necessary or desirable, to the Isle of Man or any of the Channel Islands:

Provided that no such order shall be made unless provision is made to the satisfaction of the Treasury for the payment out of moneys other than moneys provided by Parliament of such portion of any allowance or gratuity as is in their opinion attributable to service in the Isle of Man or Channel Islands.

(3.) This Act shall come into operation on the first day of April, nineteen hundred and nineteen.

(4.) This Act may be cited as the School Teachers (Superannuation) Act, 1918.

APPENDIX C.

MISCELLANEOUS STATUTES.

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School Sites Acts 527
Schools for Science and Art Act, 1891 548
Technical and Industrial Institutions Act, 1892 .. 549
Local Government (England and Wales) Act, 1898 (part) 553
Public Health Act, 1875 (part) 556
Factory and Workshop Act, 1901 (part).. 562
Canal Boats Acts (part) 567

SCHOOL SITES ACTS, 1841-1851.*

THE SCHOOL SITES ACT, 1841.

(4 & 5 VICT., c. 38.)

An Act to afford further facilities for the Conveyance and Endowment of sites for Schools.
[21*st June*, 1841.]

Repeal of 6 & 7 Will. IV., c. 70; but things done under it declared valid, and those commenced to be continued under this Act.

WHEREAS it is expedient that greater facilities should be given for the erection of schools and buildings for the purposes of education: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act an Act

* For references in the Elementary Education Acts to the School Sites Acts, see secs. 20, 21 and 86 of the Education Act, 1870, and Fourth Schedule to that Act on p. 72.

passed in the session held in the sixth and seventh years of the reign of His late Majesty King William the Fourth, intituled "An Act to facilitate the Conveyance of Sites for School-rooms," shall be and the same is hereby repealed; provided that all matters and things done in pursuance of the said Act shall be and remain valid as though the said Act was not repealed; and all matters and things commenced in pursuance of the said Act shall be continued according to the provisions of this Act, if the same shall be applicable, otherwise shall be continued conformably to the said recited Act which shall be deemed to be still in force with regard to such proceedings.

Landlords empowered to convey Land to be used as Sites for Schools, &c.

2. And be it enacted, that any person being seised in fee simple, fee tail or for life, of and in any manor or lands of freehold, copyhold, or customary tenure, and having the beneficial interest therein, or in Scotland being the proprietor in fee simple or under entail and in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange, in fee simple or for a term of years, any quantity not exceedng one acre of such land, as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge; provided that no such grant made by any person seised only for life of and in any such manor or lands shall be valid, unless the person next entitled to the same (1) in remainder in fee simple or fee tail (if legally competent) shall be a party to and join in such grant: Provided also, that where any portion of waste or commonable land shall be gratuitously conveyed by any lord or lady of a manor for any such purposes as aforesaid, the rights and interests of all persons in the said land shall be barred and divested by such conveyance: Provided also, that upon the said land so granted as aforesaid, or any part thereof; ceasing to be used for the purposes in this Act mentioned (2), the same shall thereupon immediately revert to (2) and become a portion of the said estate held in fee simple or otherwise, or of any manor or land as aforesaid, as fully to all intents and purposes as if this Act had not been passed, anything herein contained to the contrary notwthstanding. (2)

(1.) See also 7 & 8 Vict., c. 37, sec. 3, p. 541. The "Places of Worship Sites Act, 1873," contains a somewhat similar provision. It enacts that any person seised of or entitled in fee simple, fee tail, or for life, to any lands of freehold tenure and having the beneficial interest therein, and being in possession, may grant any quantity not exceeding one acre of such land, not being part of a demesne or pleasure

ground attached to a mansion house, as a site for a church, provided that no such grant made by any person seised or entitled only for life shall be valid, unless the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail, if legally competent, shall be a party to the grant, or if such person be a minor, or married woman, or lunatic, unless the guardian, husband, or committee shall in like manner concur. In *Re the Marquis of Salisbury* (34 L. T., N. S., 5), which came before the Master of the Rolls on the 1st of July, 1875, it appeared that the Marquis of Salisbury proposed to give a site for a church at Everton, and the question was raised between him and the Ecclesiastical Commissioners, the proposed grantees of the site, whether the word "guardian" in this Act referred to a guardian by nature or a guardian by appointment of the Lord Chancellor, the Marquis being tenant for life in possession of the site, and Viscount Cranborne, the tenant in tail in remainder, being a minor. The Master of the Rolls held that guardian by nature was not intended. The site, he said, could not be conveyed without the concurrence of a guardian, yet, so far as he could see, no guardian could be appointed, for the court had no jurisdiction to appoint a guardian of an infant unless there was present property to be taken care of; and this infant's interest in the site was in remainder only. This decison was, however, on appeal reversed.

(2.) The words "for the purposes in this Act mentioned," mean such of the purposes mentioned in the Act as are applicable to the case in question, *i.e.*, the purposes to which the land has been devoted by the grantor, and not merely the purposes mentioned in the Act without reference to the purposes for which the land was granted.

Land was granted in 1868 for the site of a school under the School Sites Act, 1841, for the education of the poorer classes. The school was to be in union with the National Society for promoting the education of the poor in the principles of the Established Church and subject thereto it might be used as a Sunday school. A school was erected, but after 1907 it ceased to be used except as a Sunday school. Held by Warrington, J., that the land had reverted to the estate of which it had formed part at the time of the grant. (*A.-G.* v. *Shadwell* (1910) 1 Ch. 92, 101 L. T. 630).

In *Price* v. *Attorney-General* (1914), A.C., 20, land was conveyed under the School Sites Act, 1841, on trust to permit the premises and all buildings erected thereon to be used for ever as a school for the education of children of the poorer classes and for no other purpose, such schools to be in union with and conducted according to the principles and in furtherance of the ends and designs of the National Society for promoting the education of the poor in the principles of the Established Church. The buildings erected were carried on for several years as a public elementary school according to the principles of the Established Church but were closed in 1905 owing to the inability of the trustees to satisfy the requirements of the education authorities as to repairs and improvments. In 1906 an action was begun by the Attorney-General, at the relation of the Glamorgan County Council, against the then trustees, claiming administration of the charitable trusts affecting the school and the establishment of a scheme for the regulation and management of the charity. The scheme prepared by the Attorney-General provided for undenominational teaching, if the buildings were not used for Church of England educational purposes. On the objection of the trustees, Swinfen Eady J., modified the scheme by giving the trustees power to let the buildings and apply the net proceeds for church educational purposes. The Court of Appeal made some modifications in form but maintained the main principles laid down in the court below and took the view that the scheme should be framed so as to avoid the

reverter provided for in the Act. On appeal to the House of Lords, the parties agreed to a scheme (which the House approved), for the administration of an educational charity in connection with the Church of England.

Chancellor and Council of the Duchy of Lancaster empowered to grant Lands to the Trustees of any existing or intended School.—If Lands cease to be used for the Purposes of the Act, they shall revert.

3. And whereas it may be expedient and proper that the Chancellor and Council of Her Majesty's Duchy of Lancaster, on Her Majesty's behalf, should be authorised to grant, convey, or enfranchise, to or in favour of the trustee or trustees of any existing or intended school, lands and hereditaments belonging to Her Majesty in right of Her said duchy, for the purposes of this Act: Be it therefore enacted, that it shall and may be lawful for the Chancellor and Council of Her Majesty's Duchy of Lancaster for the time being, by any deed or writing under the hand and seal of the Chancellor of the said duchy for the time being, attested by the clerk of the Council of the said duchy for the time being, for and in the name of Her Majesty, Her heirs and successors, to grant, convey, or enfranchise, to or in favour of such trustee or trustees, any lands and hereditaments to be used by them for the purposes of this Act, upon such terms and conditions as to the said Chancellor and Council shall seem meet; and where any sum or sums of money shall be paid as or for the purchase or consideration for such lands or hereditaments so to be granted, conveyed or enfranchised as aforesaid, the same shall be paid by such trustee or trustees into the hands of the Receiver-General for the time being of the said duchy, or his deputy, and shall be by him paid, applied, and disposed of according to the provisions and regulations contained in an Act passed in the forty-eighth year of the reign of His late Majesty King George the Third, intituled "An Act to improve the Land Revenue of the Crown in England, and also of His Majesty's Duchy of Lancaster," or any other Act or Acts now in force for that purpose: Provided always, that upon the said land so granted as aforesaid, or any part thereof, ceasing to be used for the purposes in this Act mentioned, the same shall thereupon immediately revert to and become again a portion of the possessions of the said duchy, as fully to all intents and purposes as if this Act or any such grant as aforesaid had not been passed or made, anything herein contained to the contrary notwithstanding.

Persons under Disability empowered to convey Lands for the Purposes of this Act.

5. And be it enacted, that where any person shall be

equitably entitled to any manor or land, but the legal estate therein shall be in some trustee or trustees, it shall be sufficient for such person to convey the same for the purposes of this Act without the trustee or trustees being party to the conveyance thereof; and where any married woman shall be seised or possessed of or entitled to any estate or interest, manorial or otherwise, in land proposed to be conveyed for the purposes of this Act, she and her husband may convey the same for such purposes by deed, without any acknowledgment thereof; and where it is deemed expedient to purchase any land for the purposes aforesaid belonging to or vested in any infant or lunatic, such land may be conveyed by the guardian or committee of such infant, or the committee of such lunatic respectively, who may receive the purchase-money for the same, and give valid and sufficient discharges to the party paying such purchase-money, who shall not be required to see to the application thereof.

Corporations, Justices, Trustees, &c., empowered to convey Lands for the Purposes of this Act.

6. And be it enacted, that it shall be lawful for any corporation, ecclesiastical (1) or lay, whether sole or aggregate, and for any officers, justices of the peace, trustees, or commissioners, holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, subject to the provisions next hereinafter mentioned, to grant, convey, or enfranchise, for the purposes of this Act, such quantity of land as aforesaid in any manner vested in such corporation, officers, justices, trustees, or commissioners: Provided always that no ecclesiastical corporation sole, being below the dignity of a bishop, shall be authorised to make such grant without the consent in writing of the bishop of the diocese to whose jurisdiction the said ecclesiastical corporation is subject: Provided also, that no parochial property shall be granted for such purposes without the consent of a majority of the ratepayers and owners of property in the parish to which the same belongs, assembled at a meeting to be convened according to the mode pointed out in the Act passed in the sixth year of the reign of His late Majesty, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales" (2), and without the consent of the Poor Law Commissioners, to be testified by their seal being affixed to the deed of conveyance, and of the guardians of the poor of the union within which the said parish may be comprised, or of the guardians of the poor of the said parish where the administration of the relief of the poor therein shall be subject to a board of guardians, testified by such guardians being the

parties to convey the same: Provided also, that where any officers, trustees, or commissioners, other than parochial trustees, shall make any such grant, it shall be sufficient if a majority or quorum authorised to act of such officers, trustees, or commissioners, assembled at a meeting duly convened, shall assent to such grant, and shall execute the deed of conveyance, although they shall not constitute a majority of the actual body of such officers, trustees, or commissioners: Provided also, that the justices of the peace may give their consent to the making any grant of land or premises belonging to any county, riding, or division by vote at their general quarter sessions (3), and may direct the same to be made in the manner directed to be pursued on the sale of the sites of gaols by an Act passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled "An Act to authorise the Disposal of unnecessary Prisons in England." (2)

(1) In *Corke* v. *Rainger and Higgs* (1912), P. 69; 76 J.P. 87, it was held that the Ecclesiastical Courts have jurisdiction to grant facilities authorising the erection, on consecrated ground, of the buildings of public elementary schools not provided by the Local Education Authority, in cases where, in the buildings so to be erected, religious instruction will be given according to the principles of the Church of England and interments have never taken place in the ground to be built upon. The faculty could not be granted if the purpose was secular and not ecclesiastical. The test of what is a sufficient ecclesiastical use is this—the ecclesiastical purpose must be a substantial and not a merely incidental part of the whole scheme. Religious teaching in the principles of the Church of England may be and in the particular case was held to be a substantial part of the scheme of a non-provided school. An intended use of the building for a Sunday school and for religious classes on weekday evenings was held to be material in this case in deciding whether the purpose of the buildings was secular or ecclesiastical.

(2) In the case of a parish in a rural district, the consent of the parish meeting is now substituted for that of the ratepayers and owners of property (Local Government Act, 1894, sec. 52).

(3) The lands and premises belonging to any county are now vested in the County Council (Local Government Act, 1888, sec. 64).

(4) See *Hornsey District Council* v. *Smith*, in note to sec. 19 of the Education Act, 1870, p. 228, as to the trustees of a school, the site of which was conveyed under this Act, being "owners" under the Public Health Act, 1875, as regards works of private street improvements.

Grants of Land may be made to Corporations or Trustees, to be held by them for School Purposes.

7. And be it enacted, that all grants of land or buildings, or an interest therein, for the purposes of the education of poor persons, whether taking effect under the authority of this Act or any other authority of law, may be made to any corporation sole or aggregate, or to several corporations sole,

or to any trustees whatsoever, to be held by such corporation or corporations or trustees for the purposes aforesaid: Provided nevertheless, that any such grant may be made to the minister of any parish being a corporation, and the churchwardens or chapelwardens, and overseers of the poor, or to the minister and kirk session of the said parish and their successors; and in such case the land or buildings so granted shall be vested for ever thereafter in the minister, churchwardens or chapelwardens, and overseers of the poor, for the time being, or the minister and kirk session of such parish, but the management, direction, and inspection of the school shall be and remain according to the provisions contained in the deed of conveyance thereof: Provided also, that where any ecclesiastical corporation sole below the dignity of a bishop shall grant any land to trustees, other than the minister, churchwardens or chapelwardens, and overseers, for the purposes aforesaid, such trustees shall be nominated in writing by the bishop of the diocese to whose jurisdiction such corporation shall be subject: Provided that where any school shall be intended for any ecclesiastical district, not being a parish as hereinafter defined, it shall be sufficient if the grant be made to the minister and church or chapelwarden or wardens of the church or chapel of such district, to hold to them and their successors in office; and such grant shall inure to vest the land, subject to the conditions contained in the deed of conveyance, in such minister and the church or chapelwarden or wardens for the time being.

Estates now vested in Trustees for the Purposes of Education may be conveyed to the Minister and Churchwardens.

8. And whereas schools for the education of the poor in the principles of the Established Church, or in religious and useful knowledge, and residences for the masters or mistresses of such schools, have been heretofore erected, and are vested in trustees not having a corporate character: Be it therefore enacted, that it shall be lawful for the trustees for the time being of such last-mentioned schools and residences, not being subject to the provisions of the Act passed in the last session of Parliament, intituled "An Act for Improving the Conditions and extending the Benefits of Grammar Schools," to convey or assign the same, and all their estate and interest therein, to such ministers and churchwardens and overseers of the poor of the parish within which the same are respectively situate, and their successors as aforesaid, or, being situate within an ecclesiastical district not being a parish as hereinafter defined, then to the minister and church or chapelwardens of the church or chapel of such district, and their

successors, in whom the same shall thereafter remain vested accordingly, but subject to and under the existing trusts and provisions respectively affecting the same. (1)

(1) See also 7 & 8 Vict., c. 37, secs. 4, 5, *post.*

Any Number of Sites may be granted for Separate Schools.

9. And be it enacted, that any person or persons or corporation may grant any number of sites for distinct and separate schools, and residences for the master or mistress thereof, although the aggregate quantity of land thereby granted by such person or persons or corporation shall exceed the extent of one acre; provided that the site of each school and residence do not exceed that extent; provided also, that not more than one such site shall be in the same parish. (1)

(1) See also 12 & 13 Vict., c. 49, sec. 3; and 14 & 15 Vict., c. 24, sec. 1, *post.*

Form of Grants, &c.

10. And be it enacted, that all grants, conveyances, and assurances of any site for a school, or the residence of a schoolmaster or schoolmistress, under the provisions of this Act, in respect of any land, messuages, or building may be made according to the form following, or as near thereto as the circumstances of the case will admit (that is to say)—

'I [*or* We, *or the corporate title of a Corporation*], under the authority of an Act passed in the year of the reign of Her Majesty Queen Victoria, intituled 'An Act for affording further Facilities for the Conveyance and Endowment of Sites for Schools,' do hereby freely and voluntarily, and without any valuable consideration *or* do, in consideration of the sum of to me *or* us *or* the said paid,] grant, [alienate,] and convey to all [*description of the premises*], and all [my *or* our *or* the right, title, and interest of the] to and in the same and every part thereof, to hold unto and to the use of the said and his *or* their [heirs *or* executors *or* administrators *or* successors], for the purposes of the said Act, and to be applied as a site for a school for poor persons of and in the parish of and for the residence of the schoolmaster [*or* schoolmistress] of the said school [*or for other purposes of the said school*], and for no other purpose whatever, such school to be under the management and control of [*set forth the mode in which and the persons by whom the school is to be managed, directed, and inspected*]. [*In case the school be conveyed to trustees, a clause providing for the renewal of the trustees, and in cases where the land is purchased,*

exchanged, or demised, usual covenants or obligations for title may be added.] In witness whereof the conveying and other parties have hereunto set their hands and seals, this day of

" Signed, sealed, and delivered by the said in the presence of of ."

And no bargain and sale or livery of seisin shall be requisite in any conveyance intended to take effect under the provisions of this Act, nor more than one witness to the execution by each party; and instead of such attestation such conveyance of any lands or heritages in Scotland shall be executed with a testing clause, according to the law and practice of Scotland; and, being recorded within sixty days of the date thereof in the general register of seisins or particular register for the county or stewartry in which the lands or heritages lie, shall, without actual seisin, be valid and effectual in law to all intents and purposes, and shall be a complete bar to all other rights, titles, trusts, interests, and incumbrances to, in, or upon the lands or heritages so conveyed.

Application of Purchase-money for Land sold by an Ecclesiastical Corporation Sole.

11. And be it enacted, that where any land shall be sold by any ecclesiastical corporation sole for the purposes of this Act, and the purchase-money to be paid shall not exceed the sum of twenty pounds, the same may be retained by the party conveying, for his own benefit; but when it shall exceed the sum of twenty pounds, it shall be applied for the benefit of the said corporation, in such manner as the bishop in whose diocese such land shall be situated shall, by writing under his hand, to be registered in the registry of his diocese, direct and appoint; but no person purchasing such land for the purpose aforesaid shall be required to see to the due application of any such purchase-money.

Application of Purchase-money for Land sold in Scotland.

12. And be it enacted, that the price of any lands or heritages to be sold for the purposes of this Act by any heir of entail or other incapacitated person or persons in Scotland shall be applied and invested in such and the like manner as is directed in relation to any moneys awarded to be paid for lands or heritages belonging to heirs of entail or incapacitated persons under an Act passed in the first and second years of the reign of His late Majesty King William the Fourth, intituled " An Act for amending and making more effectual the Laws concerning Turnpike Roads in Scotland."

Ecclesiastical Corporations to procure a Certificate as to the Extent of the Land conveyed.—Form of Certificate.

13. And be it enacted, that when any ecclesiastical corporation sole below the dignity of a bishop shall grant any land belonging to him in right of his corporation for the purposes of this Act, he shall procure a certificate, under the hands of three beneficed clergymen of the diocese within which the land to be conveyed shall be situate, as to the extent of the land, so conveyed, to be endorsed on the said deed, which certificate shall be in the form following (that is to say)—

"We, *A. B.* Clerk, Rector of the parish of , *C. D.* Clerk, Rector of the parish of , and *E. F.* Clerk, Vicar of the parish of , being three beneficed Clergymen of the Diocese of , do hereby certify, That Clerk, Rector of the parish of , within the said diocese of , being about to convey a portion of land situate in the said parish of , for the purposes of a school, under the powers of the Act, passed in the year of the reign of Her Majesty Queen Victoria, intituled 'An Act for affording further facilities for the Conveyance and Endowment of Sites for Schools," we have at his request inspected and examined the portion of land, and have ascertained that the same is situate at [*here describe the situation*], and that the extent thereof does not exceed acre. As witness our hands, this day of at in the county of and diocese of .

"Witness of ."

And until such certificate shall have been signed no such conveyance shall have any force or validity.

Trustees empowered to sell or exchange Lands or Buildings.

14. And be it enacted, that when any land or building shall have been or shall be given or acquired under the provisions of the said first recited Act or this Act, or shall be held in trust for the purposes aforesaid, and it shall be deemed advisable to sell or exchange the same for any other more convenient or eligible site, it shall be lawful for the trustees in whom the legal estate in the said land or building shall be vested, by the direction or with the consent of the managers and directors of the said school, if any such there be, to sell or exchange the said land or building, or part thereof, for other land or building suitable to the purposes of their trust, and to receive on any exchange any sum of money by way of effecting an equality of exchange, and to apply the money arising from such sale or given on such exchange in the pur-

chase of another site, or in the improvement of other premises used or to be used for the purposes of such trust ; provided that where the land shall have been given by any ecclesiastical corporation sole the consent of the bishop of the diocese shall be required to be given to such sale or exchange before the same shall take place : Provided also, that where a portion of any paliamentary grant shall have been or shall be applied towards the erection of any school, no sale or exchange thereof shall take place without the consent of the Secretary of State (1) for the Home Department for the time being.

(1) By sec. 2 of the Education (Administrative Provisions) Act, 1907, the consent of the Board of Education is substituted for the consent of the Secretary of State for the Home Department under sec. 14 of the above Act.

All Conveyances of Land under 6 & 7 Will. IV., c. 70, to be deemed effectual for vesting the Fee Simple.

15. All conveyances whereby any land shall have been conveyed to the minister or incumbent and the churchwardens or chapelwardens of any parish or place for the time being, whether made to them as such minister or incumbent and churchwardens or chapelwardens, or to them and their successors, shall be deemed and taken to have been and shall be valid and effectual for the purpose of vesting the fee simple, or such other estate as hath been proposed to be conveyed, in the persons who from time to time shall be the minister or incumbent and the churchwardens or chapelwardens of such place, such minister being the rector, vicar, or perpetual curate, whether endowed or not, of the said parish or place.

No Schoolmaster to acquire a Life Interest.

17. And be it enacted, that no schoolmaster or schoolmistress to be appointed to any school erected upon land conveyed under the powers of this Act shall be deemed to have acquired an interest for life by virtue of such appointment, but shall, in default of any specific engagement, hold his office at the discretion of the trustees of the said school.

Justices of the Peace or Sheriffs to give Possession of Schoolrooms, &c., in case of the Refusal of the Master.

18. And for the more speedy and effectual recovery of the possession of any premises belonging to any school which the master or mistress who shall have been dismissed, or any person who shall have ceased to be master or mistress, shall hold over after his or her dismissal or ceasing to be master or mistress, be it enacted, that when any master or mistress, not being the master or mistress of any grammar school within the provision of the Act of the last session of Parliament here-

inafter mentioned, holding any schoolroom, schoolhouse, or any other house, land, or tenement, by virtue of his or her office, shall have been dismissed or removed, or shall have ceased to be master or mistress, and shall neglect or refuse to quit and deliver up possession of the premises within the space of three calendar months after such dismissal or ceasing to be master or mistress, not having any lawful authority for retaining such possession, it shall be lawful for the justices of the peace acting for the district or division in which such premises are situated, in petty sessions assembled, or any two of them, or for the sheriff of the county of Scotland, and they are hereby required, on the complaint of the trustees or managers of the said school, or some one of them, on proof of such master or mistress having been dismissed or removed, or having ceased to be such master or mistress, to issue a warrant under their hands and seals, or under the hand of such sheriff in Scotland, to some one or more of the constables and peace officers of the said district or division, or of the sheriff's officers in Scotland, commanding him or them, within a period to be therein named, not less than ten nor more than twenty-one clear days from the date of such warrant, to enter into the premises, and give possession of the same to the said trustees or managers or their agents, such entry and possession being given in England in such manner as justices of the peace are empowered to give possession of any premises to any landlord or his agent under an Act passed in the second year of the reign of Her present Majesty, intituled "An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy."

Powers granted to the Commissioners under 3 & 4 *Vict., c.* 60, *for applying Land to Ecclesiastical Purposes extended to Land granted by Way of Gift.*

19. And whereas by an Act passed in the last session of Parliament intituled "An Act to further amend the Church Building Acts," provision was made to enable Her Majesty's Commissioners for building new churches to apply land in any parish granted to them for any of the purposes of the Church Building Acts to any other ecclesiastical purposes, or for the purpose of any parochial or charitable school, or any other charitable or public purpose relating to any such parish or place: And whereas through an accidental omission such provision does not extend to cases of land granted by way of gift: Be it therefore enacted, that such power, so given to the said Commissioners, so far as it is applicable to the purposes of any school, shall extend to every case of land granted, given, or conveyed to them under the authority of the several Acts in the said Act recited.

Definition of the Term "Parish."

20. And be it enacted, that the term "parish" in this Act shall be taken to signify every place separately maintaining its own poor, and having its own overseers of the poor and church or chapel wardens.

Limits of Act.

21. And be it enacted that this Act shall not extend to Ireland.

Act not to affect 1 & 2 Vict., c. 87, or 3 & 4 Vict., c. 48.

22. And be it enacted, that nothing herein contained shall repeal or affect an Act passed in the second year of the reign of Her present Majesty, intituled "An Act to facilitate the Foundation and Endowment of additional Schools in Scotland," or another Act passed in the last session of Parliament, intituled "An Act to enable Proprietors of entailed Estates in Scotland to feu or lease on long Leases Portions of the same for the building of Churches and Schools, and for Dwelling Houses and Gardens for the Ministers and Masters thereof."

Act may be amended, &c.

23. And be it enacted, that this Act may be altered or amended by any Act to be passed in this session of Parliament.

THE SCHOOL SITES ACT, 1844.

(7 & 8 VICT., c. 37.)

An Act to secure the terms on which grants are made by Her Majesty out of the Parliamentary grant for the Education of the Poor; and to explain the Act of the fifth year of the reign of Her Present Majesty, for the Conveyance of sites for Schools.

[19*th July*, 1844.]

WHEREAS during several years last past divers sums of money have been granted by Parliament to Her Majesty, to be applied for the purpose of promoting the education of the poor in Great Britain, and similar grants may hereafter be made: And whereas Her Majesty hath appointed a committee of Her Council to receive applications for assistance from such grants, and to report thereon, and to advise her as to the terms and conditions upon with such assistance shall be

granted, and many such reports have been made, and approved of by Her Majesty, and the terms and conditions having been assented to by the applicants, grants have been made out of the said fund: And whereas in some cases, by reason of the deeds of endowment of schools in respect of which such applications have been received having been executed before the grant has been made, such terms and conditions have not been and cannot be made permanently binding on the estate; but the parties promoting the said schools have entered into personal obligations or assurances for the due performance of such terms and conditions, though deriving no beneficial interest from the charitable institution which they have established: and it is desirable to provide permanent security to Her Majesty and her successors for the due fulfilment of the terms and conditions, and to relieve the parties from the personal liabilities so entered into for the purpose aforesaid:

The Terms and Conditions upon which Parliamentary Aid has been given towards the building of Schools secured upon the Site.

1. Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that where any grant hath been made or shall hereafter be made out of any sums of money heretofore granted or hereafter to be granted by Parliament for the purposes of education in Great Britain, under the advice of any committee of the Council on Education for the time being, upon terms and conditions to provide for the inspection of the school by an inspector appointed or to be appointed by Her Majesty and her successors, which shall not be inserted in the conveyance of the site of the school, or in the deed declaring the trusts thereof, and such grant shall be made in aid of the purchase of the site, or of the erection, enlargement, or repair of the school, or of the residence of the master or mistress thereof, or of the furnishing of the school, such terms and conditions shall be binding and obligatory upon the trustees or managers of the said school or other the premises for the time being, in like manner and to the like effect as though they had been inserted in the conveyance of the site of the said school, or in the declaration of the trusts thereof; and henceforth all personal obligations entered into for the purpose of securing the fulfilment of such terms and conditions shall, so far as they relate thereto, but no further, be null and void: Provided nevertheless, that such terms and conditions shall have been or shall be set forth in some document in writing, signed by the trustees of the said school or the major part of them, or

by the party or parties conveying the site, in the case where there shall have been a voluntary gift thereof.

The Terms upon which Aid shall be granted to Trustees of Ancient Endowed Schools.

2. And whereas there are many endowments for the purpose of education of the poor in Great Britain of ancient date, the schools whereon have become dilapidated, and, the funds of such endowment being insufficient for the restoration thereof, application is made by the trustees, or by the persons acting in the discharge of the trusts thereof, for aid out of the said parliamentary grant, but the same hath been declined, because such applicants could not impose upon their lawful successors in the said trust the conditions which the said committee would have advised Her Majesty to require to secure the due inspection of such schools, and it is expedient to enable them to do so: Be it therefore enacted, that where the major part of the trustees of any endowed school for the education of the poor duly appointed under the terms of the deed of endowment, or, when such deed cannot be found, or cannot be acted upon, of the persons who shall be in the possession of the endowment, and shall be acting in the execution of the trusts or the reputed trusts thereof, shall, and in cases where there shall be a visitor of such school with the consent of such visitor in writing, apply for aid out of such parliamentary grant to enable them to rebuild, repair, or enlarge the school belonging to such endowment, or the residence of the master or mistress thereof, or to furnish such school, and shall in writing assent to the said school being open to inspection on behalf of Her Majesty and her successors, if the said committee shall deem fit to advise that any such grant shall be made, it shall immediately after the making of such grant, and thenceforth from time to time, be lawful for any inspector of schools appointed by Her Majesty and her successors, in conformity with the terms contained in the writing testifying such consent as aforesaid, to enter the said school at all reasonable hours in the day for the purpose of inspecting and examining the state and condition of the school and the scholars thereat, and of making such report thereon, as he shall deem fit.

Death of Donor within Twelve Calendar Months not to avoid Grant.

3. And whereas by an Act passed in the fifth year of the reign of Her present Majesty, intituled "An Act to afford further Facilities for the Conveyance and Endowment of Sites for Schools," it is enacted, that any person, being seised in fee simple, fee tail, or for life, of and in any manor, or lands

of freehold, copyhold, or customary tenure, may grant, convey, or enfranchise, and subject to the provisions therein mentioned, any quantity not exceeding one acre of land as a site for a school or otherwise, as therein likewise specified; and it is desirable to prevent any such grant, being of so limited an interest, from being defeated by the death of the grantor: Be it enacted, that where any deed shall have been or shall be executed under the powers and for the purposes contained in the said Act, without any valuable consideration, the same shall be and continue valid, if otherwise lawful, although the donor or grantor shall die within twelve calendar months from the execution thereof.

Site may be granted to the Minister and Churchwardens.

4. And whereas it was provided by the said Act that grants of land or buildings, or any interest therein, for the purposes of the education of poor persons, might be made to the minister of any parish, being a corporation, and the churchwardens or chapelwardens and overseers of the poor and their successors, and it is sometimes found inexpedient or impracticable to introduce the overseers as parties to the legal estate: Be it therefore enacted, that such grants may be made to the minister and churchwardens of any parish, such minister being the rector, vicar, or perpetual curate thereof, whether endowed or not, to hold to them and their successors, subject to the provisions contained in the deed of conveyance thereof for the management, direction, and inspection of the school and premises.

Rector, &c., may grant to Minister and Churchwardens, or to Minister, Churchwardens, and Overseers.

5. And be it enacted, that if the rector, vicar, or perpetual curate of any parish shall be desirous of making a grant of any land for the purposes and under the powers of the said Act, being part of the glebe or other possessions of his benefice, and shall, with the consent of the patron of the said benefice, and of the bishop of the diocese within which the same shall be situated, grant the same to the minister and church or chapel wardens, or to the minister, church or chapel wardens, and overseers of the poor of the said parish, such grant shall be valid, and shall thenceforth inure for the purposes of the trust set forth therein, if otherwise lawful, notwithstanding such minister is the party making the grant.

Act may be altered, &c.

6. And be it enacted, that this Act may be altered by any other Act in this session of Parliament.

THE SCHOOL SITES ACT, 1849.

(12 & 13 VICT., C. 49.)

An Act to extend and explain the provisions of the Acts for the Granting of Sites for Schools.

[28*th July*, 1849.]

WHEREAS by an Act passed in the fifth year of the reign of Her Majesty provisions are made for facilitating the erection of schools and buildings for the education of poor persons, which said Act hath been since explained and extended by an Act of the eighth year of the reign of Her Majesty; and it is expedient that further facilities should be afforded for the conveyance of lands for sites for schools in cases where such lands are comprised with other lands in leases, and that some amendments should also be made in the said Acts: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

Where Part only of Land under Lease conveyed, the Rent, and Fine upon Renewal of Lease, may be apportioned.

1. That if part only of any lands comprised in a lease for a term of years unexpired shall be conveyed or agreed to be conveyed for the purposes of the said firstly hereinbefore mentioned Act, the rent payable in respect of the lands comprised in such lease, and any fine certain or fixed sum of money to be paid upon any renewals thereof, or either of such payments, may be apportioned between the part of the said lands so conveyed or agreed to be conveyed and the residue thereof; and such apportionment may be settled by agreement between the parties following, that is to say, the lessor or other the owner subject to such lease of the lands comprised therein, the lessee or other the party entitled thereto by virtue of such lease or any assignment thereof for the residue of the term thereby created, and the party to whom such conveyance as aforesaid for the purposes of the said firstly hereinbefore mentioned Act is made or agreed to be made; and when such apportionment shall so be made it shall be binding on all under-lessees and other persons and corporations whatsoever, whether parties to the said agreement or not.

Liabilities of Tenants, and Remedies of Landlords, as to the Lands not conveyed.

2. And be it enacted, that in case of any such apportionment as aforesaid, and after the lands so conveyed or agreed

to be conveyed as aforesaid shall have been conveyed, the lessee, and all parties entitled under him to the lands comprised in the lease not included in such conveyance shall, as to all future accruing rent, and of all future fines certain or fixed sums of money, to be paid upon renewals, be liable only to so much of the rent and of such fines or sums of money as shall be apportioned in respect of such last-mentioned lands; and the party entitled to the rent reserved by the lease shall have all the same rights and remedies for the recovery of such portion of the rent as last aforesaid as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, and of fines or sums of money to be paid upon renewals, in case of any apportionment of the same respectively, shall remain in force with regard to that part of the land comprised in the lease which shall not be so conveyed as aforesaid, in the same manner as they would have done in case such part only of the land had been included in the lease.

The Same Person may grant Several Sites for Schools in the Same Parish if the Whole Extent do not exceed Certain Limits. 4 & 5 *Vict., c.* 38, *sec.* 9.

3. And whereas by the said first-recited Act power is given to to any person or corporation to grant any number of sites for distinct and separate schools; but after providing that the site of each school and residence do not exceed one acre, it is also provided that not more than one such site shall be in the same parish; and doubts have been entertained as to the meaning of this last-recited proviso; Be it therefore declared and enacted, that nothing in the said Act contained shall prevent any person or corporation from granting any number of sites for separate and distinct schools in the same parish provided the aggregate quantity of land granted by such person in the same parish shall not exceed the extent of one acre. (1)

(1) See also 14 & 15 Vict. c. 24, sec. 1, *post.*

Grants of Land for Sites of Schools by Owners or Tenants in Tail to be Valid although Grantor die within Twelve Months.

4. And whereas it would be expedient that the absolute owners of land and tenants in tail in possession should have the power of granting land to a limited extent for the purpose of erecting sites for schools to be applied and used in and for the education and instruction of persons intended to be masters or mistress of elementary schools for poor persons, without any risk of such grant being defeated by the death of the

grantor: Be it therefore enacted, that it shall be lawful for all persons, being such absolute owners or tenants in tail in possession as aforesaid, to grant, convey, or enfranchise, by way of gift, sale or exchange, any quantity of land, not exceeding in the whole five acres, to any corporation sole or aggregate, or to several corporations sole, or to any trustees whatsoever, to be held, applied, and used by such corporation or corporations or trustees in and for the erection of school buildings and premises thereon for the purpose of education and instructing, and of boarding during the time of such education and instruction, persons intended to be masters or mistresses of elementary schools for poor persons, and for the residence of the principal or master or mistress and other officers of such institution; and such gift, sale, or exchange shall be and continue valid, if otherwise lawful, although the donor or grantor shall die within twelve calendar months, from the execution thereof: Provided always, that it shall be lawful for the trustees of such school buildings and premises to allow the same to be applied and used, concurrently with the education and instruction of such masters or mistresses, for the purpose of boarding other persons and of educating and instructing the said persons in religious and useful knowledge.

The Owners of Land empowered to vest any Quantity of Land for Purposes of these Acts in Corporations.

5. And whereas the absolute owners of land may grant, subject to the regulations and provisions prescribed by the statutes in such behalf, any quantity of such land to trustees, to be held upon charitable purposes; and it would be beneficial that they should be authorised to exercise such power in respect of lands granted for sites or for the endowment of the last-mentioned schools, or of schools for poor persons, by vesting the same so as to secure it permanently for the purpose of the trust, without the necessity of subsequent renewals of the deeds of trust: Be it therefore enacted, that where any such person shall be lawfully entitled to convey an estate in lands to trustees, to hold the same upon any charitable use, and shall be desirous of conveying the same for the purposes of the Acts hereinbefore referred to or, this Act, or for the endowment of such schools, such person may grant and convey the same to any corporation or corporations as aforesaid to be held in trust for such purposes, whatever may be the quantity of land or extent of the estate so to be granted and conveyed.

Mode of conveying the Lord's Interest and that of the Copyholder in Copyhold Land.

6. And be it enacted, that where land of copyhold or customary tenure shall have been or shall be granted for the

purposes of the said Acts, the conveyance of the same by any deed wherein the copyholder shall grant and convey his interest, and the lord shall also grant his interest, shall be deemed to be valid and sufficient to vest the freehold interest in the grantee or grantees thereof without any surrender or admittance or enrolment in the Lord's Court.

Interpretation Clause.

7. And be it enacted, that, except in cases where there shall be something in the subject or context repugnant to such construction, words occurring in this Act and the above-recited Acts importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender only shall include females; and the word "land" shall include messuages, houses, lands, tenements, hereditaments, and heritages of every tenure; and the word "lease" shall include an under-lease, agreement for a lease, and missive of lease; and the word "owner" shall include any person or corporation enabled under the provisions of the said firstly hereinbefore mentioned Act to convey lands for the purposes thereof.

Act may be amended, &c.

8. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

THE SCHOOL SITES ACT, 1851.

(14 & 15 VICT., c. 24.)

An Act to amend the Acts for the Granting of Sites for Schools.

[24*th July*, 1851.]

WHEREAS by the statute fourth and fifth Victoria, chapter thirty-eight, power is given to divers persons therein mentioned to grant, convey, and enfranchise a certain portion of land for the purpose of a site for a school for the education of poor persons, or for the residence of a schoolmaster or schoolmistress, or otherwise for the education of poor persons in religious and useful knowledge, and provisions are contained therein for facilitating the conveyance of such sites and perpetuating the trusts of the deeds: And whereas the persons therein mentioned having been authorised to grant any number of sites for distinct and separate schools, and residences for the master or mistress thereof, it is provided that the site of each school and residence should not exceed the

extent of one acre, and it is also provided that not more than one such site should be in the same parish : And whereas by the twelfth and thirteenth Victoria, chapter forty-nine, it is declared and enacted that nothing in the last-recited Act contained should prevent any person or corporation from granting any number of sites for separate and distinct schools in the same parish, provided the aggregate quantity of land granted by such person in the same parish should not exceed the extent of one acre : And whereas by reason of the great extent of some parishes, wherein the population is very large, this limitation is found to be productive of inconvenience, and to prevent the extension of the education of the poor ; and it is desirable to make further provisions in this behalf : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same, as follows :

The word Parish in 4 *&* 5 *Vict., c.* 38, *sec.* 9, *and* 12 *&* 13 *Vict., c.* 49, *sec.* 3, *to signify an Ecclesiastical District in any Divided Parish.*

1. The word "parish" in the sections of the statutes herein referred to shall, in the case of any parish which has heretofore been or shall hereafter be divided by lawful authority into two or more ecclesiastical districts, whether confined to such parish or comprising also any part of another parish, be construed with reference to such parish to signify each such ecclesiastical district.

Incorporation of this Act with Recited Acts.

2. This Act shall be construed as and be deemed to be a part of the said recited Acts, except so far as it amends the same.

SCHOOLS FOR SCIENCE AND ART ACT, 1891.

(54 & 55 Vict., c. 61.)

An Act to facilitate the Transfer of Schools for Science and Art to Local Authorities.

[*5th August*, 1891.]

. . . . . .

Transfer of School for Science and Art or Literary or Scientific Institution to Local Authority.

1.—(1.) The managers of any school for science and art, or for science, or for art, or of any institution to which the Literary and Scientific Institutions Act, 1854, applies, may make an arrangement with any local authority within the meaning of the Technical Instruction Act, 1889, for transferring the school or institution to that authority, and the local authority may assent to any such arrangement and give effect thereto, subject to the provisions of that Act.

(2.) The provisions of section twenty-three of the Elementary Education Act, 1870, with respect to arrangements for the transfer of schools shall apply in the case of arrangements for the transfer of schools or institutions in pursuance of this section, with this modification, that for the purposes of transfers to a local authority references to the school board shall be construed as references to the local authority and references to the Education Department as reference to the Department of Science and Art, and references to the school shall, in the case of an institution not being a school, be construed as references to the institution.

(3.) In this section the expression "managers" includes all persons who have the management of any school or institution, whether the legal interest in the site and buildings of the school or institution is or is not vested in them.

The reference to the Technical Education Act, 1889, is to be construed as a reference to the provisions of Part II. of the Education Act, 1902, p. 125, *ante*, and the provisions of that Act apply with respect to any school, college, or hostel established, and to any obligation incurred under the Technical Instruction Acts, 1889 and 1891 (both repealed), as if the school, college, or hostel had been established, or the obligation incurred under Part II. of that Act (Education Act, 1902, Third Schedule (11), *ante*.

The Board of Education have taken the place of the Education Department and the Department of Science and Art (Board of Education Act, 1899, sec. 2, *ante*).

Short Title.

2. This Act may be cited as the "Schools for Science and Art Act, 1891."

TECHNICAL AND INDUSTRIAL INSTITUTIONS ACT, 1892.

(55 & 56 Vict., c. 29.)

An Act to facilitate the Acquisition and Holding of Land by Institutions for promoting Technical and Industrial Instruction and Training.

[*27th June*, 1892.]

Short Title.

1. This Act may be cited as the "Technical and Industrial Institutions Act, 1892."

Definition of Institutions.

2. This Act applies to every institution established, whether before or after the passing of this Act, for effecting all or any of the following purposes, that is to say :—

(i.) To give technical instruction within the meaning of the Technical Instruction Act, 1889 ;

(ii.) To provide the training, mental or physical, necessary for the above purpose ;

(iii.) In connection with the purposes before mentioned, to provide workshops, tools, scientific apparatus, and plant of all kinds, libraries, reading rooms, halls for lectures, exhibitions, and meetings, gymnasiums and swimming baths, and also general facilities for mental and physical training, recreation, and amusement, and also all necessary and proper accommodation for persons frequenting the institution ;

and every such institution is in this Act referred to as the institution.

The Technical Instruction Act, 1889, was repealed by the Education Act, 1902 ; see the Third Schedule (11), p. 228. References to the former Act are to be construed as references to Part II. of the Education Act, 1902, unless the context otherwise requires.

School authorities who provide technical classes as part of their system of higher education should be careful to see that dangerous machines used in the classes are properly protected. The following case indicates the nature of their duty in the matter. In a class in which a circular saw was in use without any guard, a lad of nineteen had his hand drawn into the machine so that his thumb had to be amputated. In an action against the Local Education Authority who provided the class the plaintiff stated that he knew that the saw was dangerous and that it would be less dangerous if guarded ; but

that he never suggested to the instructor that it should be guarded. The County Court Judge found for the plaintiff but on appeal his judgment was set aside (1) on the ground that there was no evidence that the suggested method of guarding the saw was such a regular and well-recognised method of working circular saws that it ought to have been adopted by the Local Education Authority; and (2) that the maxim *volenti non fit injuria* applied. *Smerkinich* v. *Newport Corporation* (1912), 76 J.P. 454; 10 L. G. R. 959).

Governing Body.

3.—(1.) The governing body of the institution may be any body corporate, council, public authority, local authority, commissioners, directors, committee, trustees, or other body of persons, corporate or unincorporate, willing to undertake, or elected or appointed for the purpose of undertaking, or having, the government and management of the institution.

(2.) The governing body may make bye-laws and rules for the management and conduct of the institution.

Incorporation of 8 & 9 Vict., c. 18. 23 & 24 Vict., c. 106.

4. The Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Amendment Act, 1860 (except the provisions of those Acts relating to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by promoters of the undertaking, and with respect to determining the amount of purchase money by valuation of surveyors), are hereby incorporated in this Act.

See sec. 34 of the Education Act, 1918, and the note thereto, as to the Acquisition of Land (Assessment of Compensation) Act, 1919, p. 396.

Power to take Land by Agreement.

5. The governing body of the institution may by agreement enter on, take, and use any land required by them for the purposes of the institution, and such land may be conveyed either to the governing body or to trustees for the governing body.

Conveyance may be by Way of Sale, Exchange, or Gift.

6.—(1.) A conveyance of land may be made to the governing body of the institution or to trustees for the governing body either for valuable consideration in money, or in consideration of a rent-charge, or by way of exchange for other land, or, subject as in this Act provided, by way of free gift, and without any consideration.

(2.) A conveyance under this Act by a person having an equitable estate shall operate to pass any bare outstanding legal estate vested in a trustee.

Conveyances by Limited Owners.

7.—(1.) A conveyance under this Act by a person not entitled to dispose absolutely for his own benefit of the land proposed to be conveyed (other than a conveyance on a sale or exchange for the best consideration in money, or by way of rent-charge, or in land to be reasonably obtained) shall be subject to the following restrictions and provisions :—

(*a*) It shall not in itself, or in addition to any land conveyed under this Act by the same person, comprise more than two acres in the whole in any one county, city, or borough ;

(*b*) It shall be made either with the consent of the person, if any, entitled to the next estate of freehold in remainder for the time being, or with the approval of the High Court of Justice.

(2.) Every application to the Court for an order approving a conveyance under this Act shall be by summons in chambers, and shall, subject to the Acts regulating the Court, be assigned to the Chancery Division.

(3.) On any such application, the Court may direct notice to be served on such persons, if any, as it thinks fit.

(4.) On any such application, the Court shall have regard to the circumstances of the settled estate, the wants of the neighbourhood, and the interests of the persons entitled in remainder, and the Court, if it thinks fit under all the circumstances of the case, may make an order approving the proposed conveyance. Such order, if the Court thinks fit, may be made on such terms and conditions, if any, as the Court thinks proper ; but no such order shall be made if the application is opposed by any person entitled in remainder, unless the Court is of opinion that the opposition is unreasonable, or the interest of the person opposing so remote that it may properly be disregarded.

Institution to be Public.

8. Every institution for which land has been acquired under an exercise of the powers conferred by this Act shall be open generally either to all persons or to all persons within specified limits as to age, qualification, or otherwise, and either without payment or on specified terms as to times of attendance and payment of subscriptions or fees or otherwise, but so that no preference be given to any person or class of persons within the specified limits.

Site may be Sold or Exchanged.

9.—(1.) Land acquired under the powers of this Act shall not be used otherwise than for the purposes of an institution

within the meaning of this Act, but, with the consent of the Charity Commissioners, may be sold or may be exchanged for other land.

(2.) The governing body or their trustees may execute conveyances and do all acts necessary to effectuate a sale or exchange.

(3.) On a sale, the receipt of the governing body or of the trustees for the governing body shall be a sufficient discharge for the purchase money, and such money shall, as soon as convenient, be invested in the purchase of other land.

(4.) Land purchased or taken in exchange under this section shall be devoted to the same purposes and be liable to the same incidents as originally were applicable to or affected the land sold or given in exchange.

(5.) Money arising by sale may, until reinvested in the purchase of land, be invested in the names of the governing body or of trustees for the governing body in any manner in which trust money is for the time being by law authorised to be invested; and all dividends and income or investments so made and all the resulting income shall be invested in like manner so as to accumulate in the way of compound interest, and be added to capital until the capital is reinvested in the purchase of land.

Parts I. and II. of 51 *&* 52 *Vict., c.* 42, *and part of* 54 *&* 55 *Vict., c.* 73, *not to apply.*

10.—(1.) Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891, as require that land assured by will shall be sold within one year from the death of the testator, shall not apply to conveyances or to assurances by will made under or for the purposes of this (1) Act, ...

(1) In *re Stanley's trust deed; Stanley* v. *A.-G.* 26 T.L.R. 365.

See sec. 46 of the Education Act, 1918, and the note thereto.

(2.) Any corporate body may acquire and shall be entitled to hold and retain land for the purposes of this Act without any licence in mortmain.

LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

(51 & 52 Vict., c. 41.)

Provisions as to Borrowing by County Council.

69.—(1.) The county council may from time to time, with the consent of the Local Government Board, borrow, on the security of the county fund, and of any revenues of the council, or on either such fund or revenues, or any part of the revenues, such sums as may be required for the following purposes, or any of them, that is to say :—

(*a*) For consolidating the debts of the county ; and

(*b*) For purchasing any land or building any building which the council are authorised by any Act to purchase or build ; and

(*c*) For any permanent work or other thing which the county council are authorised to execute or do, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years ; and

(*d*) . . . . ; and

(*e*) For any purpose for which quarter sessions or the county council are authorised by any Act to borrow,

but neither the transfer of powers by this Act nor anything else in this Act shall confer on the county council any power to borrow without the consent above-mentioned, and that consent shall dispense with the necessity of obtaining any other consent which may be required by the Acts relating to such borrowing, and the Local Government Board, before giving their consent, shall take into consideration any representation made by any ratepayer or owner of property rated to the county fund.

(2.) Provided that where the total debt of the county council, after deducting the amount of any sinking fund, exceeds, or if the proposed loan is borrowed will exceed, the amount of one-tenth of the annual rateable value of the rateable property in the county, ascertained according to the standard or basis for the county rate, the amount shall not be borrowed, except in pursuance of a provisional order made by the Local Government Board and confirmed by Parliament.

Note 69.—The above powers of the Local Government Board have been transferred to the Minister of Health by the Ministry of Health

Act, 1919; and the consent of that Minister must be obtained where, under the above sub-section, the consent of the Local Government Board is required.

Any loans raised by a county council under the Education Act, 1902, and any loans transferred to the council under that Act, are not to be reckoned for the purpose of the limitation on borrowings which is imposed by this sub-sec. (Education Act, 1902, sec. 19 (2), and Second Schedule (3), pp. 192 and 218).

(3.) A county council may also from time to time, without any consent of the Local Government Board, during the period which was fixed for the discharge of any loan raised by them under this Act, or transferred to them by this Act, borrow on the like security such amount as may be required for the purpose of paying off the whole or any part of such loan, or if any part of such loan has been repaid otherwise than by capital money for reborrowing the amount so repaid, and for the purpose of this section, "capital money" includes any instalments, annual appropriations, and sinking fund, and the proceeds of the sale of land or other property, but does not include money previously borrowed for the purpose of repaying a loan.

Sec. 31 of the Local Loans Act, 1875, confers on "local authorities," as defined by sec. 36 of the Act (which definition includes the council of a county, county borough, or urban district), a general power of re-borrowing, in manner provided by that Act, for the purpose of discharging any loan lawfully contracted by them.

(4.) All money reborrowed shall be repaid within the period fixed for the discharge of the original loan, and every loan for reborrowing shall for the purpose of the ultimate discharge be deemed to form part of the same loan as the original loan, and the obligations of the council with respect to the discharge of the original loan shall not be in any way affected by means of the reborrowing.

(5.) A loan under this section shall be repaid within such period not exceeding thirty years, as the county council, with the consent of the Local Government Board, determine in each case.

By sec. 3 of the Education (Administrative Provisions) Act, 1907, p. 266. in the application of sec. 69 of the Local Government Act, 1888, to money borrowed after the 28th August, 1907, under the Education Acts by the council of a county, a period not exceeding sixty years shall be substituted for a period not exceeding thirty years as the maximum period within which borrowed money is to be repaid, and any money reborrowed for the purpose of discharging a loan raised for the purposes of the Education Acts may, if the Local Government Board approve, and subject to such conditions as they impose, be repaid within such period, not exceeding sixty years from the date of the original loan, as the Local Government Board fix. As to the substitution of Minister of Health for Local Government Board, see note to sub-sec. (1) above.

(6.) The county council shall pay off every loan either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with the Local Loans Act, 1875, and the Acts amending the same.

"The Local Loans Act, 1875, and the Acts amending the same" are the 38 & 39 Vic., c. 83, and the 48 & 49 Vict., c. 30. The provisions of these Acts relating to the setting apart, investment, and application of sinking funds are contained in sec. 15 of the 38 & 39 Vict., c. 83.

(7.) Where a loan is raised for any special county purpose the council shall take care that the sums payable in respect of the loan are charged to the special account to which the expenditure for that purpose is chargeable.

The term "special county purposes" is defined by sec. 68 (3) of the Act to mean any purposes from contribution to which any portion of the county is for the time being exempt, and to include any purposes where the expenditure involved is by law restricted to a hundred, division, or other limited part of the county.

(8.) Where the county council are authorised to borrow any money on loan they may raise such money either as one loan or several loans, and either by stock issued under this Act (1) or by debentures or annuity certificates under the Local Loans Act, 1875, and the Acts amending the same, (2) or, if special reasons exist for so borrowing, by mortgage, in accordance with sections two hundred and thirty-six and two hundred and thirty-seven of the Public Health Act, 1875. (3)

(1) Sec. 70 of the Act provides that county stock may be created, &c., in accordance with such regulations as the Local Government Board may prescribe. The Local Government Board have prescribed regulations under this provision.

(2) As to the Local Loans Act, 1875, and the Acts amending the same, see note to sub-sec. (6), *ante*. The provisions of those Acts as to the issue of debentures and annuity certificates are contained in secs. 5 and 7 of the 38 & 39 Vict., c. 83.

(3) For secs. 236 and 237 of the Public Health Act, 1875, see p. 558.

(9.) Provided that where a county council have borrowed by means of stock they shall not borrow by way of mortgage except for a period not exceeding five years.

Sub-sec. (9) was repealed by the County Councils Mortgages Act, 1909, Sec. 1, which also provided that the sub-section should be deemed not to have been in force as to any money borrowed by way of mortgage before 25th November, 1909.

(10.) Where the county council borrow by debentures such debentures may be for any amount not less than five pounds. . . .

Sec. 5 of the Local Loans Act, 1875 (see note (2) to sub-sec. (8), *ante*), provides that a debenture under that Act "shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than £20." This sub-section enables a county council to issue £5 debentures.

PUBLIC HEALTH ACT, 1875.

(38 & 39 Vict., c. 55.)

PROVISIONS AS TO BORROWING.

Power to Borrow on Credit of Rates.

233.—Any local authority may, with the sanction of the Local Government Board, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of the Sanitary Acts or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or reborrow, and take up at interest, any sums of money necessary for defraying any such costs, charges, and expenses, or discharging any such loans as aforesaid.

An urban authority may borrow or reborrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate. . . .

Note 233.—The above powers of the Local Government Board have been transferred to the Minister of Health by the Ministry of Health Act, 1919, and the sanction of that Minister must be obtained where, under secs. 233-234 of the Public Health Act, 1875, the sanction of the Local Government Board is required.

The security for loans raised by the council of a county borough, borough, or urban district for the purposes of the Education Acts, is to be the fund or rate out of which the expenses of the council under the Education Act, 1902, are to be defrayed (sec. 19 (1)). As to this fund or rate, see sec. 18 (1) and (4) of the Act and notes thereon (pp. 181-2).

Where Part V. of the Public Health Acts Amendment Act, 1890, has been adopted by the council of a county borough, borough, or urban district, the council are empowered to raise any loans which they are authorised to borrow by the issue of stock under and subject to the regulations prescribed by the Local Government Board under sec. 52 of that Act.

A council may also exercise any of their borrowing powers by the issue of debentures or annuity certificates under the Local Loans Act, 1875.

As to the power to borrow for the purpose of discharging existing loans, see note (p. 554), on sec. 69 (3) of the Local Goverment Act, 1888.

It was doubted whether the borrowing powers conferred upon an urban authority by sec. 233 enabled it to borrow or reborrow money

(for other than temporary purposes) without securing the repayment of the loan by a mortgage of the rates or fund on the credit of which the money was borrowed. In a case in which a loan from a bank was obtained without such security the King's Bench Division (Lord Alverstone, C. J., Bray and Pickford, J. J., held that interest paid on such a loan was illegal. Their decision was reversed by the Court of Appeal on a further agreed statement of facts. The decision of the Court of Appeal did not touch the above point, but Kennedy, L. J., in the course of his judgment, expressed the view that the decision of the King's Bench Division could not be supported. The other Lords Justices did not deal with the point in their judgments (*R.* v. *Locke* (K.B.D.) (1910), 2 K.B. 201 ; C.A. (1911), 1 K.B. 680).

Regulations as to Exercise of Borrowing Powers.

234. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations ; namely,

(1.) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years) :

(2.) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed :

(3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said Board :

Note 234.—As to the substitution of the Minister of Health for the Local Government Board, see the note to sec. 233 above.

Any loans raised by a council under the Education Act, 1902, and any loans transferred to a council under that Act, are not to be reckoned for the the purpose of the limitations on borrowing powers which are imposed by sub-secs. (2) and (3) of this section (Education Act, 1902, sec. 19 (2), and Sch. II. (3), pp. 192 and 218).

(4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, determine in each case ; and, subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of Exchequer bills or other Government securities,

such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned:

The range of securities in which sinking funds under this subsection may be invested was extended by sec. 7 of the Trust Investment Act, 1889, which enacts as follows:—"Where the council of any . . . borough or any urban or rural sanitary authority are authorised or required to invest any money for the purpose of . . . a sinking fund, any enactment relating to such investment shall be modified so far as to allow such money to be invested in any of the stocks, funds, shares, or securities in which trustess are authorised by this Act to invest, except that such council or authority shall not by virtue of this section invest in any stocks, funds, or shares, or securities issued or created by themselves, nor in real or heritable securities. Provided that it shall not be lawful for any such council or authority to retain any securities which are liable to be redeemed at a fixed time at par or at any other fixed rate, and are at a price exceeding their redemption value, unless more than fifteen years will elapse before the time fixed for redemption."

The securities in which trustees are authorised to invest are now those authorised by sec. 1 of the Trustee Act, 1893, which are substituted for the securities authorised by the Act of 1889.

(5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established: Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied:

(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying . . . expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, . . . out of a rate levied in such part of the district as aforesaid.

Form of Mortgage.

236. Every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration,

and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect.

See Form H., p. 560.

Register of Mortgages.

237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds.

Transfer of Mortgages.

238. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in Schedule IV. to this Act, or to the like effect.

See Form I., p. 561.

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and until such entry is made the local authority shall not be in any manner responsible to the transferee.

On the registration of any transfer the transferee his executors or administrators shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee his executors or administrators shall be entitled to release or discharge any such mortgage or any money secured thereby.

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds.

Receiver may be appointed in Certain Cases.

239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction; and such court may, after hearing the parties, appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid.

On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them:

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum.

SCHEDULE IV.

FORM H.—*Form of Mortgage of Rates.**

BY virtue of the Public Health Act, 1875, we the being the local authority under that Act for the district of in consideration of the sum of paid to the treasurer of the said district by *A.B.* of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [*the rates mortgaged*] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said *A.B.*, his executors, administrators, and assigns, from the

* See sec. 236, *ante*.

day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared, that the said principal sum shall be repaid on the day of at [*place of payment*]. Dated this day of one thousand eight hundred and .

[*To be sealed with the common seal of the local authority.*]

FORM I.—*Form of Transfer of Mortgage.**

I *A.B.* of , in consideration of the sum of paid to me by *C.D.* of , do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, bearing date the day of and made by the local authority under the Public Health Act, 1875, for the district of for securing the sum of and interest thereon at per centum per annum [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns,"* the within security], and all my right estate and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this day of one thousand eight hundred and .

A.B. (L.S.)

* See sec. 238, *ante*.

FACTORY AND WORKSHOP ACT, 1901.

(1 Edw. 7, c. 22.)

The following provisions with regard to the education and employment of children have not been repealed.

PART II. (iii.)

Prohibition of Employment of Children under Twelve.

62. A child under the age of twelve years must not be employed in a factory or workshop unless lawfully so employed at the commencement of this Act. (1)

(1.) For definition of the term "child," see sec. 156.

Certificates of Fitness for Employment.

64.—(8.) The certificate of birth (which may be produced to a certifying surgeon) shall either be a certified copy of the entry in the register of births, kept in pursuance of the Acts relating to the registration of births, of the birth of the young person or child (whether that copy is obtained in pursuance of the Elementary Education Act, 1876, or otherwise), or be a certificate from a local authority within the meaning of the Elementary Education Act, 1876, to the effect that it appears from the return transmitted to that authority in pursuance of the said Act by the registrar of births and deaths that the child was born at the date named in the certificate. (1)

(1) The Act requires that in the case of a child a certificate of fitness for employment shall be obtained from the certifying surgeon, and that the certificate shall be to the effect, *inter alia*, that the certifying surgeon is satisfied by the production of a certificate of birth or other sufficient evidence that the person named in the certificate is of the age therein specified. The above provision refers to the evidence of age which may be accepted by the certifying surgeon.

With regard to the references to the Elementary Education Act, 1876, as to the first see sec. 25 of that Act, and as to the second see sec. 26.

PART V. (iv.)

Application of Act to Laundries.

103. —(1.) In every laundry carried on by way of trade, or for purposes of gain, the following provisions shall apply:—

. . . . . .

(*d*) So far as regards provisions with respect to . . . education of children . . . powers of inspectors, fines, and legal proceedings, . . . this Act shall have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop, and as if every occupier of a laundry were the occupier of a factory or of a workshop;

. . . . . .

(4.) Nothing in this section shall apply to any laundry in which the only persons employed are—(*a*) inmates of any prison, reformatory, or industrial school, or other institution for the time being subject to inspection under any Act other than this Act; or (*b*) inmates of an institution conducted in good faith for religious or charitable purposes; or (*c*) members of the same family dwelling there, or in which not more than two persons dwelling elsewhere are employed.

PART VIII.

Powers of Inspectors appointed by Secretary of State.

119.—(1.) An inspector shall, for the purpose of the execution of this Act, have power to do all or any of the following things; namely,—

(*a*) To enter, inspect, and examine at all reasonable times, by day and night, a factory and a workshop, and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and

. . . . . .

(*c*) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and

. . . . . .

(*e*) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and

(*f*) To examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require every such per-

son to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and

(g) To exercise such other powers as may be necessary for carrying this Act into effect.

(2.) The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to that factory or workshop.

(3.) If any person wilfully delays an inspector in the exercise of any power under this section, or fails to comply with the requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or conceals or prevents, or attempts to conceal or prevent a woman, young person, or child, from appearing before or being examined by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act:

Provided that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

[Sub-sec. 4 of the section provides for the penalty for obstructing an inspector in the execution of his duties under the Act.]

Certificate of Birth in Case of Young Persons under Sixteen and Children.

134. Where the age of any young person under the age of sixteen years or child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the employment in labour or elementary education of the young person or child, any person shall on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register, under the Births and Deaths Registration Acts, 1836 to 1874, of the birth of that young peson or child; and such form of requisition shall on request be supplied without charge by every superintendent registrar and registrar of births, deaths and marriages.

The powers of the Local Government Board in this respect were transferred to the Minister of Health by the Ministry of Health Act, 1919.

PART IX.

Fine for employing Persons contrary to Act.

137.—(1.) Where any person is employed in a factory or workshop, other than a domestic factory or a domestic workshop, contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night five, pounds for each person so employed, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence; and where any person is so employed in a domestic factory or a domestic workshop the occupier shall be liable to a fine not exceeding one, or if the offence was commited during the night two, pounds for each person so employed, and, in the case of a second or subsequent conviction within two years from the last conviction in relation to a factory for the same offence, not less than one pound for each offence.

. . . . . .

Fine for Offence by Parent.

138.—(1.) If a young person or child is employed in a factory or workshop contrary to the provisions of this Act, the parent of the young person or child shall be liable to a fine not exceeding twenty shillings for each offence, unless it appears to the court that the offence was committed without the consent, connivance, or wilful default of the parent.

(2.) If the parent of a child neglects to cause the child to attend school in accordance with this Act, he shall be liable to a fine not exceeding twenty shillings for each offence.

Forgery of Certificates, False Entries, and False Declarations.

139. If any person—

(*a*) forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided); or

(*b*) gives or signs any such certificate knowing the same to be false in any material particular; or

(*c*) knowingly utters or makes uses of any certificate so forged, counterfeited, or false as aforesaid; or

(*d*) knowingly utters or makes use of as applying to any person a certificate which does not so apply; or

(*e*) personates any person named in a certificate; or

(*f*) falsely pretends to be an inspector; or

(*g*) wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid ; or

(*h*) wilfully makes a false entry in any register, notice, certificate, or document, required by this Act to be kept or served or sent ; or

(*i*) wilfully makes or signs a false declaration under this Act ; or

(*j*) knowingly makes use of any such false entry or declaration.

he shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, with or without hard labour.

PART X.

General Definitions.

156.—(1.) In this Act unless the context otherwise requires,—

. . . . . .

The expression "child" means a person who is under the age of fourteen years, and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school mentioned in Part III. of this Act :

. . . . . .

The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages of, a young person or child :

The expression "prescribed" means prescribed for the time being by the Secretary of State :

. . . . . .

The expression "young person" means a person who has ceased to be a child and is under the age of eighteen years.

Part III. of this Act (*i.e.* secs. 68 to 72) is repealed by the Education Act, 1918, except as respects children lawfully employed in factories and workshops at the commencement of the Act of 1918 (8th August, 1918), and except as repects Scotland and Ireland.

CANAL BOATS ACTS.

THE CANAL BOATS ACT, 1877.

(40 & 41 VICT., c. 60.)

This Act contains the following provisions with regard to the education of children dwelling on board canal boats:—

Education of Children dwelling on Board Canal Boats.

6. A child in a canal boat registered in pursuance of this Act, and his parent, shall for the purposes of the Elementary Education Acts, 1870, 1873, and 1876, be deemed, subject as hereinafter mentioned, to be resident in the place to which the boat is registered as belonging, and shall be subject accordingly to any bye-law in force under the said Acts in that place.

Provided that if the parent satisfies the school board or school attendance committee having authority in that place, that the child is actually attending school, or is under efficient instruction in accordance with the said Acts, in some other school district, the said board or committee shall grant him without charge a certificate to that effect, and thereupon he and his child shall be deemed for the purposes aforesaid to be resident in the school district in which the child is so attending school, or under efficient instruction, and shall be subject to any bye-law in force therein.

The said certificate may on application by the parent be rescinded or varied by the school board or school attendance committee for the place to which the boat is registered as belonging, and may be rescinded without application by any such board or committee, if they are satisfied, after due notice to the parent, that his child is not properly attending school or under efficient instruction in the school district mentioned in the certificate. (1)

(1) The Local Education Authority take the place of the school board or school attendance committee (2 Edw. 7, c. 42, sec. 5, p. 132), and the reference to a school district is to be construed as referring to the area under the jurisdiction of a Local Education Authority.

Registration Authority.

7. For the purpose of the registration of canal boats the registration authority shall be such one or more of the sanitary

authorities having districts abutting on a canal as may from time to time be prescribed by regulation of the Local Government Board.

A canal boat shall be registered with some registration authority having a district abutting on a canal on which such boat is accustomed or intended to ply.

With a view of determining the place to which a canal boat belongs, for the purpose of the Elementary Education Acts, 1870, 1873, and 1876, the registration authority shall register any canal boat in respect of which an application is made for registration as belonging to some place which is either a school district or is part of a school district, and is situate wholly or partly within the jurisdiction of the registration authority with which it is registered.

The powers of the Local Government Board in this repect are transferred to the Minister of Health, by the Ministry of Health Act, 1919.

As to school districts, see note on sec. 6.

Power of Canal Company, &c., to establish Schools.

12. Any company or association, corporate or unincorporate, being the owners of any canal boats, or being the owners, lessees, or undertakers of any canal, may, with the assent of a special resolution of their members, and notwithstanding any Act of Parliament, charter, or document regulating the funds of the company or association, appropriate any portion of their funds to the establishment and maintenance, or establishment or maintenance, of a school or schools wherein the children of the persons employed in canal boats may be lodged, maintained, and educated, or educated only; with this restriction, that the children shall not be maintained gratuitously, but the lodging or education may be wholly or partially gratuitous.

A "special resolution" shall for the purposes of this Act mean a resolution passed in manner provided by the fifty-first section of the Companies Act, 1862.

Definitions.

14. In this Act, unless the context otherwise requires,—

. . . . . .

The expression "parent" includes guardian, and every person who is liable to maintain or has the actual custody of any child;

The expression "canal" includes any river, inland navigation, lake, or water being within the body of a county, whether it is or not between the ebb and flow of the tide;

The expression "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal as above defined, and which is not a ship duly registered under the Merchant Shipping Act, 1854, and the Acts amending the same.

THE CANAL BOATS ACT, 1884.

(47 & 48 VICT., C. 75.)

This Act contains the following provisions in connection with the education of children dwelling on board canal boats:—

Penalty for Contravention of Regulations under Canal Boats Acts.

2. If default is made in complying with any of the regulations made or to be made by the Local Government Board and Education Department under the principal Act or this Act, and for the time being in force, the master of the boat with respect to which the default is made, and also the owner of the boat, if in default, shall for each default be liable on summary conviction to a fine not exceeding twenty shillings.

The powers of the Local Government Board in this respect are transferred to the Minister of Health, by the Ministry of Health Act, 1919.

Power to make Regulations as to School Certificates, &c.

5. The power to make regulations given to the Local Government Board by the principal Act and this Act shall include power to the Education Department to make regulations with respect to the form of certificates or pass books as to attendance at school to be used by children in canal boats.

No regulations have been made by the Board of Education with respect to these matters.

Annual Report by Education Department.

6. The Education Department shall every year report to Parliament as to the manner in which the Elementary Education Acts, 1870 and 1873, 1876 and 1880, are enforced with respect to children in canal boats, and shall for that purpose direct Her Majesty's Inspectors of Schools to communicate with the School Boards and School Attendance Committees in their district:

As to School Boards and School Attendance Committees, see the note to sec. 6 of the Canal Boats Act, 1877, above.

APPENDIX D

ORDERS, REGULATIONS, CIRCULARS AND MEMORANDA

NON-COUNTY BOROUGHS AND URBAN DISTRICTS (See page 123).

The following are the non-county boroughs, with a population exceeding 10,000 at the time of the census of 1901,—

Accrington, Ashton-under-Lyne, Bacup, Banbury, Bangor, Barnsley, Barnstaple, Batley, Bedford, Berwick-upon-Tweed, Beverley, Bexhill, Blackpool, Boston, Bridgwater, Bridlington, Brighouse, Burslem, Bury St. Edmunds, Cambridge, Carlisle, Carmarthen, Chatham, Chelmsford, Cheltenham, Chepping Wycombe, Chesterfield, Chichester, Chorley, Clitheroe, Colchester, Colne, Congleton, Crewe, Darlington, Darwen, Deal, Dewsbury, Doncaster, Dover, Dukinfield, Durham, Ealing, Eastbourne, East Retford, Eccles, Falmouth, Faversham, Folkestone, Glossop, Grantham, Gravesend, Guildford, Harrogate, Hartlepool, Harwich, Haslingden, Hemel Hempstead, Hereford, Heywood, Hove, Hyde, Ilkeston, Jarrow, Keighley, Kendal, Kidderminster, King's Lynn, Kingston-upon-Thames, Lancaster, Leigh, Lewes, Longton, Loughborough, Lowestoft, Luton, Macclesfield, Maidenhead, Maidstone, Mansfield, Margate, Middleton, Morecambe, Morley, Mossley, Neath, Nelson, Newark, Newbury, Newcastle-under-Lyme, Newport (Isle of Wight), New Windsor, Ossett, Pembroke, Penzance, Peterborough, Pontefract, Poole, Pudsey, Ramsgate, Rawtenstall, Reigate, Richmond, Rochester, Royal Leamington Spa, Ryde, St.

Albans, Salisbury, Scarborough, Shrewsbury, Smethwick, Southend-on-Sea, Southport, Stafford, Stalybridge, Stockton-on-Tees, Stoke-upon-Trent, Sutton Coldfield, Swindon, Taunton, Thornaby-on-Tees, Tiverton, Todmorden, Torquay, Truro, Tunbridge Wells, Tynemouth, Wakefield, Wallsend, Warwick, Wednesbury, Wenlock, Weymouth and Melcombe Regis, Whitehaven, Widnes, Winchester, Workington, Worthing, and Wrexham.

The following urban districts had a population of over 20,000 at the time of the census of 1901,—

Aberdare, Abertillery, Acton, Aldershot, Aston Manor, Barking Town, Barry, Beckenham, Bilston, Bromley, Cannock, Chadderton, Chiswick, Coseley, East Ham, Ebbw Vale, Edmonton, Enfield, Erith, Farnworth, Felling, Fenton, Finchley, Gillingham, Gorton, Gosport and Alverstoke, Handsworth, Hebburn, Hendon, Heston and Isleworth, Hindley, Hornsey, Ilford, Ince-in-Makerfield, Kettering, King's Norton and Northfield, Leyton, Llanelly, Merthyr Tydfil, Moss Side, Mountain Ash, Nuneaton and Chilvers Coton, Oldbury, Pemberton, Penge, Pontypridd, Radcliffe, Rhondda, Rowley Regis, Stretford, Shipley, Swinton and Pendlebury, Tipton, Tottenham, Twickenham, Wallasey, Walthamstow, Waterloo-with-Seaforth, Watford, Willesden, Wimbledon, Withington, and Wood Green.

[*27th August*, 1917.]

REGULATIONS FOR EVENING PLAY CENTRES.

1. (*a*) The Board of Education will make grants during each financial year, commencing on April 1st, in aid of Evening Play Centres, hereinafter called Centres, which provide after School hours and on Saturdays for the recreation and physical welfare under adequate supervision of children attending Public Elementary Schools.

(*b*) The grant payable in a financial year will be based on the work done and the payments made during the previous financial year except that the grant payable in the financial year commencing on April 1st, 1918, will be based on the payments made during the eight months from August 1st, 1917, to March 31st, 1918.

2. (*a*) Every Centre must be under the direction of some Body of Managers which the Board will regard as responsible for the efficient conduct of the work and for the observance of the Regulations and to which they will pay the grant.

(*b*) Where the Body of Managers is not the Local Education Authority, a person must be appointed to act as Correspondent on behalf of the Managers with the Board or with the Local Education Authority.

(*c*) Where the Body of Managers is not the Local Education Authority, the Board will not pay grants to the Centre if it is not recognised by the Authority for the purposes of section 13 of the Education (Administrative Provisions) Act, 1907, and (unless the circumstances are exceptional) if it is not aided by the Authority either by placing premises at the disposal of the Body of Managers free of any charge for rent and for heating, lighting, and cleaning, or in some other manner.

3. Every Centre must be suitable in character and financial position to receive aid from the Board and must not be conducted for private profit or farmed out to any member of the Staff.

4. The premises of the Centre, unless it is conducted in the premises of a Public Elementary School, must be approved by the Board for the purpose. They must be sanitary, convenient, safe in case of fire, and suitably equipped. In fine weather on Saturdays and during the summer months as much use as possible should be made of playgrounds, parks, recreation grounds, and other available open spaces.

5. (*a*) There must be a Superintendent for every Centre who will be responsible for the general conduct, supervision, and discipline.

(*b*) The Assistant Staff must be adequate and suitable.

6. (*a*) Admission to the Centre must be limited to children attending a Public Elementary School.

(*b*) No child while excluded from school on account of infectious illness in its home may be permitted to attend the Centre.

7. The Centre should, as a rule, meet on not less than three evenings in the week and sixty times during the year. Meetings should be of not less than 1½ hours in duration.

8. All Returns called for by the Board must be duly made.

9. A record must be kept of the number of children in attendance at each meeting.

10. The Centre must be open at all reasonable times to inspection by the Board and by the Local Education Authority. At least a full week's notice of any alteration in the time of meeting of the Centre or of its temporary closure must be given to the Board's Inspector.

11. Application for recognition or for continuance of recognition of the Centre must be made to the Board annually through the Local Education Authority, on the prescribed Form, and should ordinarily reach the Board not less than a month before the date on which the Centre opens.

12. (*a*) Where, in the Board's opinion, the Centre is conducted efficiently and with due regard to economy, grant may be paid at a rate not exceeding one half of the approved expenditure on maintenance.

(*b*) In fixing the rate of grant the Board will take into consideration the scope, character, and efficiency of the work. In particular the Board will have regard to—

(i.) the period of the year during which the Centre was open;

(ii.) the number and length of the meetings held during the period;

(iii.) the number of attendances made by the children during the period.

13. The Board may disregard any items of expenditure which, in their opinion, should not be taken into account for the purpose of the grant. If it is proposed to make a claim for grant in respect of expenditure on rent or special equipment, the Board should be informed before the expenditure is incurred.

14. When the work of a Centre has been completed in any year, a statement in a prescribed form of the work done during the year should be forwarded to the Board, together with a statement of the receipts and expenditure for the year.

15. Payment of grant is subject to the fulfilment of the conditions laid down in these Regulations, but if any of the conditions have not been fulfilled the Board may nevertheless, when there are special circumstances which would justify it, pay such grant as they may think fit.

16. Grants under these Regulations must be applied solely for the purposes of Play Centres recognised by the Board. If the grant payable is found to exceed the outstanding liabilities, an instalment not exceeding the outstanding liabilities may be paid, but payment will not be completed until the work has been resumed in the next session.

17. If any question arises as to the interpretation of these Regulations, the decision of the Board shall be final.

18. The Regulations will take effect from August 1st, 1917.

Given under the Seal of the Board of Education the 27th day of August, 1917.

[L.S.]

L. A. SELBY-BIGGE.

[1st *January*, 1919.]

EDUCATION ACT, 1918 (SECTION 34).

REGULATIONS FOR COMPULSORY PURCHASE OF LAND.

BOARD OF EDUCATION.

WHEREAS by Section 34 of the Education Act, 1918, it is enacted as follows :—

[*Sec.* 34 *will be found on p.* 395, *above.*]

And whereas the provisions contained in paragraphs (1) to (13), of the First Schedule to the Housing, Town Planning, &c., Act, 1909, with the substitutions prescribed by Section 34 of the Education Act, 1918, are as follows :—

(1.) Where a Local Education Authority propose to purchase land compulsorily under the Education Acts, the Local Education Authority may submit to the Board an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement."

(2.) An order under this Schedule shall be of no force unless and until it is confirmed by the Board, and the Board may confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall, save as otherwise expressly provided by this Schedule, become final and have effect as if enacted in the Education Acts : and the confirmation by the Board shall be conclusive evidence that the requirements of the Education Acts have been complied with, and that the order has been duly made and is within the powers of the Education Acts.

(3.) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory.

(4.) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the Local Education Authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845) and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed

by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this Schedule, apply accordingly.

(5.) The order shall be published by the Local Education Authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed.

(6.) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the Local Education Authority and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.

(7.) Where the land proposed to be acquired under the order consists of or comprises land situate in London, or a borough, or urban district, the Board shall appoint an impartial person, not in the employment of any Government Department, to hold the inquiry as to whether the land proposed to be acquired is suitable for the purposes for which it is sought to be acquired, and whether, having regard to the extent or situation of the land and the purposes for which it is used, the land can be acquired without undue detriment to the persons interested therein or the owners of adjoining land, and such person shall in England have for the purpose of the inquiry all the powers of an inspector of the Board of Education, and, if he reports that the land, or any part thereof, is not suitable for the purposes for which it is sought to be acquired, or that owing to its extent or situation or the purpose for which it is used it cannot be acquired without such detriment as aforesaid, or that it ought not to be acquired except subject to the conditions specified in his report, then, if the Board of Education confirm the order in respect of that land, or part thereof, or, as the case may require, confirm it otherwise than subject to such modifications as are required to give effect to the specified conditions, the order shall be provisional only, and shall not have effect unless confirmed by Parliament.

Where no part of the land is so situated as aforesaid, before confirming the order, the Board shall consider the report of the person who held the inquiry, and all objections made thereat.

(8.) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this Schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.

(9.) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs* to be applicable on an arbitration under this Schedule, and an arbitrator under this Schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily.

(10.) The remuneration of an arbitrator appointed under this Schedule shall be fixed by the Board.

(11.) In construing for the purposes of this Schedule or any order made thereunder, any enactment incorporated with the order, the Education Acts together with the order shall be deemed to be the special Act, and the Local Education Authority shall be deemed to be the promoters of the undertaking.

(12.) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a scale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(13.) In this Schedule the expression "Board" means the Board of Education, and the expression "prescribed" means prescribed by the Board.

NOW THEREFORE the Board of Education do Direct and Prescribe as follows: that is to say,—

1. An Order made by a Local Education Authority under

* See the scales on pages 584-5.

Section 34 of the Education Act, 1918 (hereinafter referred to as "the Compulsory Order") shall be in the form set forth in the Schedule hereto, or in a form to the like effect.

2.—(1.) Before submitting the Compulsory Order to the Board for confirmation, the Local Education Authority shall cause the same to be published by advertisement in two successive weeks in one or more of the local newspapers circulating in the area of the Local Education Authority and in the parish or parishes in which the land to which the Compulsory Order relates is situated.

(2.) The advertisements shall be headed respectively "First Advertisement" and "Second and Last Advertisement," and the first of the said advertisements shall be published not later than one calendar month after the making of the Compulsory Order.

(3.) Each of the said advertisements shall contain in addition to a copy of the Compulsory Order a notice setting out the following particulars:—

(*a*) a statement that any objection to the Compulsory Order must be presented to the Board of Education within the period of one calendar month from and after the date of the publication of the second and last advertisement; and

(*b*) a statement of the period, times, and place or places during and at which the deposited plan referred to in the Schedule to the Compulsory Order may be inspected by or on behalf of any person interested in the land to which the Compulsory Order relates.

(4.) The plan referred to in the Schedule to the Compulsory Order shall be deposited by the Local Education Authority not later than the date of publication of the first advertisement at a place convenient for the purposes of inspection, and shall be kept deposited thereat till the expiration of a period not being less than one calendar month from the date of the publication of the second and last advertisement: and the said plan shall be open for inspection by any person interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The Local Education Authority shall also make suitable provision for affording to any such person inspecting the said plan any necessary explanation or information in regard thereto.

3.—(1.) The Local Education Authority shall, not later than the date of publication of the first advertisement, cause notice of the Compulsory Order to be given to every owner, lessee, and occupier of the land to which the Compulsory Order relates, and every such notice shall include a copy of the Compulsory Order, to which shall be appended a notice containing the particulars mentioned in paragraph (3) of article 2 of this Order.

(2.) The Local Education Authority shall furnish a copy of the Compulsory Order, free of charge, to any person interested in the land to which the Compulsory Order relates, upon his applying for the same.

4. The period within which an objection to a Compulsory Order may be presented to the Board of Education by a person interested in the land to which the Compulsory Order relates shall be the period of one calendar month from and after the date of the publication of the second and last advertisement of the Compulsory Order.*

5.—(1.) The Local Education Authority shall as soon as practicable after the confirmation of the Compulsory Order cause a copy of the Compulsory Order as confirmed to be served on every owner, lessee, and occupier of the land to which the Compulsory Order relates.

(2.) A copy of the Compulsory Order as confirmed shall be furnished free of charge by the Local Education Authority to any person interested in the land authorised to be purchased upon his applying for the same, and a copy of any plan to which reference is made in the Compulsory Order as confirmed shall also be furnished by the Local Education Authority to any such person upon his applying for such copy and paying the reasonable cost of preparing the same.

6. Every notice or other document which in pursuance of paragraph (1) of article 3 or of paragraph (1) of article 5 of this Order is required to be given or served by the Local Education Authority to or on an owner, lessee, or occupier, shall be served :—

(*a*) by delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent ; or

(*b*) by leaving the same at the usual or last known place of abode of such person as aforesaid ; or

(*c*) by post as a registered letter addressed to the usual or last known place of abode of such person ; or

(*d*) in the case of a notice required to be served on a local authority or corporate body or company, by delivering the same to their clerk or secretary or leaving the same at his office with some person employed there, or by post as a registered letter addressed to such clerk or secretary at his office.

7. This Order may be cited as the Education (Compulsory Purchase) Order, 1919.

SCHEDULE.

The Local Education Authority hereby make the following Order :—

1. The Local Education Authority, for the purpose of their

*For the cases in which a Compulsory Order becomes provisional and requires to be confirmed by Parliament, see p. 403.

powers and duties under the Education Acts and subject to the provisions of those Acts, hereby put in force, as respects the land described in the Schedule hereto, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

2. This Order shall have effect as if there were incorporated therewith subject to the necessary adaptations, the Lands Clauses Acts (except Section 127 of the Lands Clauses Consolidation Act, 1845), and Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board of Education who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of the First Schedule to the Housing, Town Planning, &c., Act, 1909, as modified by Section 34 of the Education Act, 1918, apply accordingly.

3. *If any of the land described in the Schedule to this Order is glebe land or other land belonging to an ecclesiastical benefice, any sums agreed upon or awarded for the purchase of any such land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting any such land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

4. This Order may be cited as the † Order, 19 .

The SCHEDULE above referred to.

Number on Plan deposited at the Offices of the	Quantity, Description and Situation of the lands.	Owners or reputed Owners.	Lessees or reputed Lessees.	Occupiers.

Given under the Seal of the this day of 19 .

[L.S.]

Sealed by Order of the Board of Education this First day of January, 1919.

[L.S.] L. A. SELBY-BIGGE.

* Insert this article where the lands described in the Schedule in the Order include glebe land or other land belonging to an ecclesiastical benefice.

† Here insert a suitable short title.

BOARD OF EDUCATION.

Compulsory Order, Education Act, 1918 (Section 34).

Local Education Authority.

Whereas the.....Order, 19.... was made by the above-named Local Education Authority under section 34 of the Education Act, 1918, on the..... day of.....19.....and is hereinafter referred to as the Compulsory Order :

Now I.....Clerk to the.....Council of..... hereby certify as follows :—

1. The said Local Education Authority have with respect to the Compulsory Order duly complied with the provisions of article 2 of the Education (Compulsory Purchase) Order, 1919, as to the advertisement of the Order and the statements to accompany the same and as to the deposit and inspection of the plan referred to in the Schedule to the Order.

2. The newspaper(s) in which the Compulsory Order was published and the dates of publication are specified in the Schedule hereto, and copies of the issues containing the advertisements are sent to the Board of Education with this certificate.

3. The plan referred to in the Schedule to the Compulsory Order was deposited on the.....day of..... .....19.....at the place(s) named in the advertisements.

4. The said Local Education Authority have with respect to the Compulsory Order duly complied with the provisions of articles 3 and 6 of the Education (Compulsory Purchase) Order, 1919, as to giving notice to owners, lessees, and occupiers and furnishing copies of the Compulsory Order.

SCHEDULE.

Name(s) of Newspaper(s).	Date of First Publication.	Date of Second Publication.

Signed_____

Dated_____19 .

EDUCATION, ENGLAND AND WALES.

Education (Costs of Arbitration) Rules, 1919.

The Education (Costs of Arbitration) Rules, 1919, *April*, 14, 1919, *made by the Board of Education with the concurrence of the Lord Chancellor under section* 34 *of the Education Act*, 1918 (8 & 9 *Geo. V., c.* 39) *and the First Schedule to the Housing, Town Planning, &c. Act*, 1909 (9 *Edw. VII., c.* 44). (*S.R.O.* 1919—No. 553/L.10.)

Whereas Sub-section (1) of Section 34 of the Education Act, 1918, provides as follows:—

A Local Education Authority may be authorised to purchase land compulsorily for the purpose of any of their powers or duties under the Education Acts, by means of an order submitted to the Board of Education and confirmed by the Board in accordance with the provisions contained in paragraphs (1) to (13) of the First Schedule to the Housing Town Planning, &c., Act, 1909, and those provisions shall have effect for the purpose, with the substitution of the Board of Education for the Local Government Board, of the Local Education Authority for the local authority, and of references to the Education Acts for references to "this Act."

And whereas by paragraph (9) of the First Schedule to the Housing, Town Planning, &c., Act, 1909, it is provided that the Board may, with the concurrence of the Lord Chancellor make rules, fixing a scale of costs to be applicable on an arbitration under the said Schedule, and an arbitrator under that Schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily:

Now therefore, the Board of Education with the concurrence of the Lord Chancellor, for the purpose of fixing the scale of costs to be applicable on an arbitration under the First Schedule to the Housing, Town Planning, &c., Act, 1909, as applied by Section 34 of the Education Act, 1918, do hereby make the following Rules, that is to say:—

Rule 2.—Where the compensation awarded by the arbitrator to the claimant does not exceed the sum specified in the first column of the Scale No. 1 set forth in the Schedule hereto, the sum payable to the claimant for his costs of the arbitration shall be the sum specified in the second column of such scale, which sum shall include and cover all disbursements, except for the attendances of witnesses, for which attendances the sums specified in the third column of such scale shall be allowed. No charge for briefs to, or attendance of, counsel shall be allowed.

RULE 2.—Where the compensation awarded by the arbitrator exceeds the sum of three hundred pounds, but does not exceed the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 2 set forth in the Schedule hereto, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

RULE 3.—Where the compensation awarded by the arbitrator exceeds the sum of five hundred pounds, the costs and charges of the claimant in the arbitration shall be allowed, and (if necessary) taxed or determined, in accordance with the provisions of the Scale No. 3 set forth in the Schedule hereto, and no costs or charges other than those specified in such scale, or in accordance therewith, shall be allowed.

RULE 4.—So much of the First Schedule to the Arbitration Act, 1889, as provides that the arbitrator may award costs to be paid as between solicitor and client, shall not apply to an arbitration to which these Rules apply. In any case in which the arbitrator determines the amount of costs to be paid to the claimant in the arbitration, these Rules shall apply to and govern such determination of costs by the arbitrator.

RULE 5.—Nothing in these Rules shall authorise an arbitrator to hear counsel or expert witnesses, except in such cases as the Board of Education direct, and if council or expert witnesses are heard by an arbitrator without such direction, no costs shall be allowed in respect thereof.

RULE 6.—(1.) If, having regard to the nature or importance of the case, the interests of the parties, the general conduct of the proceedings, and the skill, labour, and responsibility involved, the taxing officer shall on special grounds consider to be inadequate the costs or allowances provided by any of the scales set forth in the Schedule hereto, he may make such further or increased allowances as he shall in his discretion consider reasonable.

(2.) The taxing officer may in any case where the owner or claimant is not represented by a solicitor on the arbitration make such allowance as he may consider reasonable towards the charges or expenses incurred by the owner or claimant in connection with the arbitration, but not exceeding in the aggregate the maximum amount which could otherwise have been allowed under the scale set forth in the Schedule hereto, which is applicable to the case.

RULE 7.—These Rules and the scales of costs set forth in the Schedule hereto shall not apply to the fees or remuneration properly payable to or charged by the arbitrator, which fees, if and when paid by the claimant, shall be recoverable by him from the party who is liable the pay the same.

RULE 8.—In these Rules:—

(1.) "The arbitrator" means an arbitrator appointed under the First Schedule to the Housing, Town Planning, &c., Act, 1909, as applied by Section 34 of the Education Act, 1918.

(2.) "Taxing officer" includes the arbitrator when costs are determined by him.

RULE 9.—These Rules may be cited as the Education (Costs of Arbitration) Rules, 1919.

Schedule.

SCALE NO. 1.

Scale of fixed costs where the compensation awarded does not exceed £300.

Compensation awarded. 1.	Amount of costs other than for Witnesses. 2.			Costs of attendance of Witnesses. 3.		
	£	s.	d.	£	s.	d.
Any sum not exceeding fifty pounds ..	3	3	0	2	2	0
Any sum exceeding fifty pounds, but not exceeding one hundred pounds.	5	5	0	3	3	0
Any sum exceeding one hundred pounds, but not exceeding three hundred pounds:—						
For every fifty pounds or part of fifty pounds exceeding one hundred pounds the following sums in addition to those prescribed for compensation which exceeds fifty pounds.	2	2	0	1	1	0

SCALE NO. 2.

Costs where the compensation awarded exceeds £300 but does not exceed £500:—

(*a*) The amount payable to the claimant for the costs of the arbitration shall be the sum of £20, which sum shall include all charges and disbursements of every kind, except those hereinafter specially mentioned

*(*b*) In addition to the said sum of £20, there shall be allowed to the claimant the charges and expenses of one expert witness for qualifying and giving evidence as to the value of the claimant's lands, or interest in land, or the amount of compensation to which the claimant is entitled: which charges and expenses shall be taxed and allowed in accordance with the provisions of Scale No. 3, hereinafter set forth.

*(*c*) If counsel is employed by the claimant, there shall be allowed to him, in addition, for preparing and delivering briefs to and obtaining the attendance of counsel, such fees as, having regard to all the circumstances of the case, the taxing officer shall think fit.

SCALE NO. 3.

Scale of costs and allowances where the compensation exceeds £500:—

	£	s.	d.
1. Instructions for claim and attendances on owner or claimant in respect thereof	1	1	0
2. Correspondence and attendance on the Clerk to the Council or Council's solicitor thereon, including drawing and copy claim	1	1	0

* *See* Rule 5 as to employment of counsel and expert witnesses.

		£	s.	d.
*3.	Attending on each witness (of two witnesses) instructing him to qualify and subsequently perusing his report, or if the arbitrator is a surveyor on one witness only	0	13	4
4.	Attending on the arbitrator and on the Clerk to the Council or Council's solicitor arranging appointment for the day of hearing	0	13	4
5.	Notice to each witness to attend	0	5	0
6.	If a view is reasonably necessary attendances on the arbitrator and the Clerk to the Council or Council's solicitor arranging for view	0	13	4
7.	Attending view with them	3	3	0
8.	Paid travelling expenses			
*9.	If counsel employed, instructions to counsel to attend view	0	6	8
*10.	Paid his fee and clerk	5	10	0
11.	Instructions for attending before the arbitrator and to conduct the claimant's case	2	2	0
*12.	If counsel employed in lieu of last item instructions for brief	2	2	0
*13.	Drawing case and minutes of evidence, at per folio, 1s.; and if counsel attending, brief copy for counsel at per folio, 4d.			
*14.	Paid counsel's fee			
*15.	Attending him	0	6	8
*16	Paid counsel's conference fee	1	6	0
	Ditto ditto (if a leader)	2	7	0
*17.	Attending to appoint and on conference	1	0	0
18.	Solicitor attending reference and conducting case, case completed on each side (solicitor and clerk) ..	5	5	0
19.	If reference not held in town in which the solicitor carries on business, for hotel expenses of solicitor	1	1	0
	Ditto ditto of clerk ..	0	15	0
	(And for travelling expenses the sum actually paid.)			
20.	If reference not concluded, for each subsequent day the same charges.			
*21.	If counsel in attendance, solicitor attending each day on reference	3	3	0
22.	And if not in solicitor's town, for hotel expenses (and travelling expenses actually paid)	1	1	0
23.	Paid witnesses (according to the Scale or allowances in the Supreme Court Taxing Office).			
24.	Drawing bill of costs and copy for taxing, at per folio, 8d.			
25.	Copy for the Clerk to the Council or Council's solicitor, at per folio, 4d.			
26.	Notice of taxing	0	4	0
27.	Attending taxing	0	13	4
28.	Paid taxing (the fee payable in the Supreme Court Taxing Office on taxing costs).			
29.	Letters and messengers	1	1	0
30.	In agency cases for correspondence between solicitor and London agent	1	1	0

Given under the Seal of Office of the Board of Education this 14th day of April, 1919.

[L.S.] *L. A. Selby-Bigge.*

I concur, *Birkenhead, C.*

* *See* Rule 5 as to employment of counsel and expert witnesses.

EXTRACTS FROM THE REGULATIONS FOR SECONDARY SCHOOLS (ENGLAND), 1919.

CHAPTER I.

Scope and Organisation.

1. In order to be recognised as a Secondary School within the meaning of these Regulations, a School must offer to each of its pupils a progressive course of general education . . . (with the requisite organisation, curriculum, teaching staff, and equipment) of a kind and amount suitable for pupils of an age-range at least as wide as from 12 to 17. Provision made for pupils below the age of 12 must be similarly suitable, and in proper relation to the work done in the main portion of the School.

2. A School will not be recognised as a Secondary School unless (i.) an adequate proportion of the pupils remain at least four years in the School, and (ii.) an adequate proportion of the pupils remain in the School up to and beyond the age of 16.

* * * * * * *

3. . . .

4. The School must meet regularly during not less than 36 weeks in the course of the School Year, the School hours and the arrangements as to vacations being approved by the Board as satisfactory. Cases of closure under order of a medical or sanitary authority, or for other unavoidable cause, must be notified to the Board, and will be taken into account for the purpose of this Article.*

5.—(*a*) No catechism or formulary distinctive of any particular religious denomination may be taught in the School except as provided by this Article.

(*b*) If the instrument under which the School is governed requires, or does not prohibit, the giving in the School of religious instruction distinctive of any particular denomination, the Governing Body may provide such instruction for any pupil upon the written request of the parent or guardian of the pupil. A record must be kept of all such requests.

(*c*) In a School where such instruction is given, regulations must be made by the Governing Body such as will secure observance of provisions (*a*), (*b*), and (*c*) of this Article to the satisfaction of the Board, and a copy of such regulations must be given to the parent or guardian of every pupil.

(*d*) Such instruction, if given, must be provided from funds other than Grants made by the Board of Education or any Local Authority.

* See notes on Art. 57 of the Elementary Codes, p. 607.

CHAPTER II.

Curriculum.

. . . . . .

CHAPTER III.

Teaching Staff.

12. The teaching staff must be sufficient in number and qualification for providing adequate instruction in each subject of the approved curriculum.

13. The number of pupils taught together at one time must not as a rule exceed 30, and must never exceed 35.

14. The teaching staff may not undertake any other duties which, in the opinion of the Governing Body or of the Board, would interfere with the efficient discharge of their duties in the School.

15. The salaries of the teaching staff must in no case be subject to variation according to the amount of Grant received.

16. Where the Board think fit, they may, on consideration of the teaching staff as a whole, require that a certain proportion of all new appointments shall consist of persons who have gone through a course of training recognised by the Board for the purpose.

CHAPTER IV.

Admission, Fees, and Records.

17. No pupil may be refused admission* to the School except on reasonable grounds. Any question or dispute arising under this provision shall, if necessary, be determined by the Board.

18.—(*a*) No pupil shall be required, as a condition of being admitted into or remaining in the School as a day scholar, to attend or abstain from attending any Sunday School, place of religious worship, religious observance or instruction in religious subjects in the School or elsewhere; and the times for religious worship or for any lesson on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of any pupil therefrom.

(*b*) This provision shall also apply to boarders as well as day scholars. But in a School governed by a Scheme made under the Endowed Schools Acts or the Charitable Trusts

* As to refusal to admit, see the notes on p. 605.

Acts this Regulation shall be regarded as met (i.) by compliance with the Scheme where it includes the provisions prescribed by Section 16 of the Endowed Schools Act, 1869, or (ii.) by compliance with regulations made by the Governing Body in accordance with the provisions of that Section where the Scheme does not include those provisions.

19. The School may be with or without fees, but any fees must be approved by the Board as suitable. The tuition fee, if any, must cover all subjects of instruction included in the approved curriculum, and the use of all educational equipment (including stationery) necessary for those subjects, except, if the Governing Body think fit, printed books and mathematical instruments. It must, except with the special consent of the Board, be on a scale uniformly applicable to all pupils and not subject to increase at an age beyond 12 ; but different rates of fee may be approved for pupils residing within and without a given area, and for two or more pupils who are members of the same family.

20. In all fee-charging Schools, free places must be offered at the beginning of each School Year to pupils entering from Public Elementary Schools under the conditions laid down in the Appendix to these Regulations. The number to be offered will ordinarily be 25 per cent. of the total number of pupils admitted to the School during the previous year, but this percentage may be reduced or varied by the Board on sufficient grounds in the case of any particular School.

For the first two years of recognition, the number of free places required to be offered will be prescribed by the Board, and will be based on the normal number of annual admissions as nearly as this can be estimated.

21. Records with regard to all pupils admitted must be kept in the Registers supplied by the Board, and in accordance with the rules furnished therewith.

CHAPTER V.

Management.

22. The School must be conducted by a Governing Body acting under and in accordance with a scheme or minute or body of written regulations which states its constitution and defines its functions both as regards responsibility for general control and as regards immediate responsibility (including that of the Head Master or Head Mistress) for the conduct of the School, and which is approved by the Board. A copy of the scheme or minute or body of regulations as proved must be deposited with the Board, and its provisions must not be varied or departed from without the approval of the Board.

23. The instrument under which the School is governed (whether in the form of a Trust Deed, Scheme, Charter, Act of Parliament, Statutes, Regulations, or Minutes) must not require any members of the teaching staff to belong, or not to belong, to any particular denomination.

24. The Governing Body of the School, where it is not a Local Education Authority or a Committee of a Local Education Authority, must contain either (*a*) a majority of representative Governors or (*b*) a number of Governors (being not less than one-third of the total number of Governors) appointed by the Local Education Authority for the purposes of Part II. of the Education Act, 1902, for the area in which the School is situated, or if, in the opinion of the Board, the School serves more than one such area, by the Local Education Authorities for these areas, in such proportions as the Board think proper; provided that if any Authority or Constituency abstains from exercising or fails to exercise any power of appointment or election exercisable by it and by reason only of such abstention or failure the Governing Body does not contain the requisite proportion of representative Governors or of Governors appointed by the Local Education Authority or Authorities for the purposes of Part II. of the Education Act, 1902, as the case may be, the School may nevertheless be regarded as complying with this Regulation.

In this Article—

(i.) "Representative Governor" means (*a*) a member appointed on the Governing Body by a Local Authority or by a popular constituency, and (*b*) any person who is a member of the Governing Body by virtue of his office as a Member of Parliament, Mayor, Chairman, Vice-Chairman, or member of any Local Authority, or as Chairman or Vice-Chairman of a popular constituency.

(ii.) "Local Authority" includes the Council of any County, Borough, Urban or Rural District or Parish, any Committee constituted under Section 17 of the Education Act, 1902, and any Board of Guardians.

(iii.) "Popular Constituency" includes any Parish Meeting or Vestry, and the ratepayers of any Parish.

25. A meeting of the Governing Body, of which sufficient notice will be given, must be held, if required, when the School is inspected, and the accounts and any other papers necessary for inquiry into the control and conduct of the School must be produced when required by the Board or by an Inspector of the Board.

26. The Governing Body must appoint a person to act as Correspondent for the School with the Board.

CHAPTER VI.

General Conditions of Recognition for Grants.

27. Application to the Board for placing a School on the list of Secondary Schools recognised for Grants, on a form of Preliminary Statement which will be supplied by the Board must be made by the Governing Body or by the Local Education Authority providing the School, and should be made not less than a month before the beginning of the School Year.

The School Year will begin on 1st August and end on 31st July. In special circumstances a School applying for recognition may be recognised for a shortened initial year from 1st January to 31st July.

28. The Board before granting the application will have regard to the suitability of the education provided by the School in view of the circumstances of the locality, and to the relation of the School to other Schools and places of education available for the area; and where the School is not provided by a Local Education Authority, will consult the Local Education Authority. Recognition may be withdrawn at any time by the Board.

29. The School must be efficient; must not complete unduly with a neighbouring School; must be eligible from its character, financial position, and scale of fees, if any, to receive aid from public funds, and must be open at all times to inspection by the Board.

30. The School must not be conducted for private profit or farmed out to the Head Master or Head Mistress.

31. The School premises must be sanitary, convenient for teaching purposes, adapted to the circumstances of the School, and provided with adequate equipment and appliances for the curriculum approved in accordance with Chapter II. of these Regulations. The plans of both site and buildings for new Schools, or for enlargement of existing Schools, must be submitted to the Board for approval.

32. All returns called for by the Board must be made, and a full account of the income and expenditure of the School, made up to 31st March, must be furnished annually in such form as the Board may require.

33. A School is not placed on the Grant List unless it has at least 20 pupils over 12 years of age.

34. The time-table of every School on the Grant List must be forwarded each year to the Inspector on the form supplied for that purpose, at the beginning of the School Year, or at such times as the Board may prescribe. Deviations from it should not be made, except in case of special emergency, without previous notice to the Inspector. Occasional holi-

days should be notified to the Inspector beforehand. Permanent alterations which it is desired to make in the approved curriculum must be submitted to the Board for approval; but an approved curriculum need not be re-submitted so long as no substantial alteration in it is desired by the Governing Body or required by the Board.

35. The Board may at any time require that such portion of the School as they may think fit shall be submitted for examination to an Examining Body approved by them for that purpose. Pupils may not, without the express previous permission of the Board, be presented for any other external examination of a general character below the stage of an approved First Examination except one held solely for the award of scholarships or exhibitions, or held as required by a Scheme made under the Endowed Schools Acts or the Charitable Trusts Acts.

A copy, in duplicate, of the report made by any external Examining Body must be sent to the Board.

CHAPTER VII. (See p. 419.)

Grants.

. . . . . .

CHAPTER IX.

List of Efficient Schools.

51. The Board have established a List of Schools recognised by them as efficient under these Regulations. This List includes, together with all Schools on the Grant List, Schools not eligible or not applying for Grants which the Board determine to be efficient upon inspection either in the exercise of their jurisdiction under the Charitable Trusts Acts or on application by the Governing Body or persons responsible for the management of the School.

A School making such organised provision for advanced work as would qualify it, if on the Grant List, for recognition of one or more Advanced Courses under Chapter VIII. of these Regulations will be specially noted accordingly on the Board's List of Efficient Schools.

52. Schools applying for this recognition may be either—

(*a*) Schools fully complying with the definition of a Secondary School given in Articles 1 and 2 of these Regulations and having at least 20 pupils over 12 years of age; or

(*b*) Preparatory Schools which provide an education of

the same kind and quality as that contemplated by Article 1 for pupils of an age-range at least as wide as from 9 to 13, and from which the pupils normally proceed to continue their education at some Secondary School or other similar institution. No such School will be regarded as eligible for recognition which has less than thirty pupils.

53. . . . .

54. In order to be placed on the Efficient List, the School must satisfy the Board on inspection that it has an adequate staff, provides a suitable curriculum and efficient instruction and possesses adequate premises and equipment. . . .

57. A School placed on the List of Efficient Schools may be removed from the List at any time at the discretion of the Board, and its continuance on the List will depend on the results of such further inspections as the Board may from time to time hold. So long as the School is on the List it must be open at all reasonable times to inspection by the Board, and must make such returns to the Board as the Board may from time to time require.

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58. These Regulations, which supersede previous Regulations, come into force as from August 1st, 1919, and may be cited as the Regulations for Secondary Schools, England, 1919.

L. A. SELBY-BIGGE,

Secretary to the Board of Education.

26th May, 1919.

APPENDIX.

Rules with Regard to Free Places.

EXTRACTS FROM THE ELEMENTARY EDUCATION PROVISIONAL CODE, 1919.

CHAPTER I.

The Curriculum, Syllabus, and Time Table.

6. Instruction may be given in religious subjects, but, except as authorised by statute, no grant is made in respect of such instruction. (*Section* 97 (1), *Elementary Education Act*, 1870, *and Section* 44, *Education Act*, 1918.)

7. (*a*) The time of opening and closing the school and the time during which instruction is given in each subject of the school curriculum must be entered in the Time Table; and in cases where any secular or religious instruction, or religious observance taking place during the time set apart for religious instruction, is to take place elsewhere than on the school premises, this must be clearly stated on the Time Table.

(*b*) The Time Table, and the curriculum of secular instruction, are subject to the approval of the Board, which will be expressed by the Inspector on behalf of the Board. The approval, on whatever date it may have been given, will continue until it is withdrawn. Minor or temporary modifications in the arrangements for secular instruction need not be notified to the Inspector, but important modifications must not be made without his previous approval, unless they are sanctioned by the Local Education Authority in pursuance of a general arrangement arrived at after consultation with him.

(*c*) Every Time Table must be hung up conspicuously in the school, and must bear upon it the Inspector's signature, and either (i.) a certificate by the Local Education Authority or one of its officers that it has been approved by the Authority, or (ii.) a certificate by the Managers that to the best of their knowledge it conflicts with no byelaw as to school attendance, or direction as to secular instruction, made or given by the Local Education Authority under the Education Acts, 1870 to 1918.

(*d*) In cases where any question is pending between the Managers of a Voluntary School and the Local Education Authority regarding some requirement of the Authority which may affect the Time Table, the Board may accord temporary or provisional approval of the Time Table pending the determination of the question.

(*e*) If the parent of any scholar attending the school applies in writing to see the Time Table it must be open to his or her inspection at any reasonable time outside the ordinary school hours.

CHAPTER II.

Teaching Staff.

The Head Teacher.

8. Every school or department must have a Head Teacher who should be held responsible for the general control and supervision of the instruction and discipline. Except in special circumstances approved by the Board, the Head Teacher must undertake no outside duties which occupy any part of the school hours.

A school may consist of one or more "departments," and if any question arises whether any part of a school is or is not a department, or whether any department is or is not a separate school, or whether any classes in a school or department are, or are not, equivalent to a school, department or division formerly recognised for older scholars or infants, as the case may be, it shall be determined for the purposes of this Code by the Board of Education.

9. (*a*) Subject to the exceptions provided for below, the Head Teacher of every School or Department must satisfy the following conditions:—

(i.) He must be a Certificated Teacher or a Teacher recognised under Schedule I. B.

(ii.) He must, unless he has obtained his Parchment Certificate under the provisions of the Code for 1906 or previous years, have completed such service as is required for the endorsement of a certificate. (*Schedule I.A.* 4 (ii.).)

(iii.) He must, unless he is recognised by the Board as a Certificated Teacher, or a Teacher qualified under Schedule I.B., as from 1st August, 1910, or some earlier date, have completed satisfactorily a course of training approved by the Board under the Regulations for the Training of Teachers.

(*b*) A Certificated Teacher, or a Teacher recognised under Schedule I.B., may in special circumstances be accepted by the Board as a Head Teacher although he does not satisfy conditions (ii.) or (iii.) of Article 9 (*a*), if he possesses such other special qualifications as the Board can accept as enabling them to dispense with those conditions.

(*c*) Where a Teacher was accepted as a Head Teacher of any School or Department before 1st August, 1909, the Board may continue to accept him as the Head Teacher of that School or Department.

(*d*) A Teacher may be accepted as the Head Teacher of a School or Department with an average attendance* of not more than sixty scholars although he does not satisfy condition (ii.) of Article 9 (*a*).

(*e*) The Board may, for the present, accept a Certificated Teacher who does not satisfy conditions (iii.) of Article 9 (*a*) as the Head Teacher of a School or Department with an average attendance of not more than forty scholars, provided that the Inspector reports (1) that the teacher is specially qualified to take charge of the School or Department in question, and (2) that the School or Department is so circumstanced that it is difficult to obtain a fully qualified Certificated Teacher.

Where an Uncertificated Teacher was accepted as a Head Teacher of a school or department before 1st August, 1914, the Board may for the present continue to accept him as Head Teacher of that school or department provided that the conditions stated in this Article are satisfied.

(*f*) Further exceptions may be made to this Article in cases where there is extraordinary difficulty in obtaining a Head Teacher qualified under this Article or in providing for the attendance of Scholars from remote places at a School having a Head Teacher qualified under this Article.

(*g*) A School or Department which is already on the List of Public Elementary Schools (*Article* 34) may with the consent of the Board, which will only be given if there are special circumstances to justify such a course, be under the charge of a Teacher not qualified under this Article for a period not exceeding three months exclusive of the ordinary school holidays provided that the School or Department is kept open and the registers are duly marked during that period.

The Staff.

10. The school or department must have a sufficient and suitable staff.

The "staff" of a school or department consists, for the purposes of this Code, of all the teachers whose employment as such in the school or department is recognised by the Board (*see Articles* 11, 12 (*c*) and 15).

. . . . . .

A School or Department will not as a rule be regarded as suitably staffed unless it includes at least one Certificated Teacher (inclusive of the Head Teacher) for every complete group of seventy scholars in average attendance.

* As to what is "an average attendance" for the purposes of the Code, see Art. 46.

11. (*a*) In order to be recognised on the staff of a school or department, a teacher, other than the Head Teacher, must (with the exceptions named in the following paragraph) be a Certificated or Uncertificated Teacher, a person having the status of a Certificated or Uncertificated Teacher as defined in Schedule I., or a Student-Teacher recognised under the Regulations for the Training of Teachers. (*See Schedule* II.)

For the present, Supplementary Teachers and Pupil-Teachers may be recognised on the staff. (*See Schedules* I. and II.)

(*b*) *Cancelled. See Article* 12 (*c*).

(*c*) No person who is a member of, or is employed otherwise than in teaching by, a Local Education Authority can as a rule be recognised as part of the staff of any school within the area of such Authority. (*See also Article* 51 (*c*).)

(*d*) No person who is a clerk in Holy Orders or the regular Minister of a Congregation can be recognised as part of the staff of a school or department for the purposes of this Code.

(*e*) It is a condition of the Board's recognition of any person as a teacher that a satisfactory Medical Certificate has been produced by him.

The conditions in this clause do not apply to Pupil-Teachers or Student-Teachers.

When a teacher has once been recognised, a fresh Medical Certificate will not be required by the Board on his removal to the area of another Local Education Authority or to another school.

(*f*) A person not recognised on the staff of the school who is employed as attendant or monitor may not be placed in charge or made responsible for the teaching of a class or part of a class. A scholar who is under the legal obligation to attend school must not be employed as a monitor. (*See also Article* 43 (*e*) and *Schedule* IV. 21.)

12. (*a*) In no case will a staff be considered sufficient if, in the aggregate, it is not at least equivalent for the average attendance of the school or department measured by the following scale, viz :—

Teacher.	Number of Children in Average Attendance.
The Head Teacher	35
Each Assistant Teacher (Certificated or recognised under Schedule I.B.)	60
Each Uncertificated Assistant Teacher ..	35
Each Student-Teacher	20
Each Supplementary Teacher	20

A school thus staffed, especially a small school of one department, will not necessarily be regarded as complying with the requirements of Article 10. In every case the sufficiency and suitability of the staff will be viewed in the light of the various considerations specified in that Article.

This Article does not apply to Greenwich Hospital or to Marine Schools.

(*b*) (*Cancelled.*)

(*c*) Where the Board are satisfied that a vacancy in the office of an assistant teacher on the staff of a school or department cannot be immediately filled by a temporary or permanent teacher qualified under Article 11, a temporary teacher or teacher not so qualified may be recognised for a period not exceeding three months (inclusive of holidays) from the date of the vacancy. Each teacher so recognised will be accepted as equivalent for the purposes of Article 12 (*a*) to a Supplementary Teacher.

13. (*Cancelled.*)

Size of Classes.

14. The number of scholars on the register of any class (*Schedule* IV. 12) or group of classes under the instruction of one teacher must not exceed 60.

Conditions of Employment.

15. Teachers must be employed under written agreements, provided that, in the case of a school provided by a Local Education Authority, a teacher may be employed under a minute of the Authority.

(*a*) Any agreement or minute of appointment dated on or after 1st August, 1904, under which a teacher other than a Pupil-Teacher or Student-Teacher is employed in a Public Elementary School, must include, either expressly or by reference to this Article of the Code, one or other of the alternative Clauses set out below:—

The Board will not recognise, as part of the staff of a school or department, any teacher, other than a Pupil-Teacher or Student-Teacher, unless this condition is complied with.

Clause (1).

The teacher shall not be required to perform any duties except such as are connected with the work of a Public Elementary School, or to abstain outside the school hours from any occupations which do not interfere with the due performance of his duties as teacher of a Public Elementary School.

Clause (2).

The teacher shall not be required to perform any duties except such as are connected with the work of a Public Elementary School and with the instruction of Pupil-Teachers, or to abstain outside the school hours from any occupations which do not interfere with the due performance of his duties as teacher of a Public Elementary School or with the instruction of Pupil-Teachers.

(*b*) Clause (2) must be included only if the teacher is required to instruct Pupil-Teachers who are not receiving instruction in a Centre recognised by the Board. In other cases Clause (1) must be included.

(*c*) Sub-section (*a*) of this Article does not apply to Marine Schools or to schools which are attached to institutions in which children are boarded and lodged.

(*d*) The agreements or minutes under which Pupil-Teachers and Student-Teachers are employed must be in accordance with the Regulations for the Training of Teachers.

(*e*) The agreement must not provide that the salary shall be reduced if any deduction is made by the Board from the grant.

Notice of Changes in the Staff.

16. If in the course of a school year the staff of any school or department is changed by the leaving of any teacher, or by the appointment of a new teacher, notice should at once be given to the Board on the forms provided for the purpose, copies of which may be obtained from the Board on application.

It is important that all cases of summary dismissal should immediately be reported with full particulars to the Board.

CHAPTER III.

Premises, Accommodation, and Equipment.

17. (*a*) Before recognising newly erected premises as suitable for a Public Elementary School, the Board must be satisfied by the submission of plans, drawn in accordance with the prescribed requirements, that the Building Regulations are complied with.*

(*b*) Before recognising enlargements or alterations (other than minor alterations as defined below) of premises which are already recognised, the Board must be satisfied, by the submission of properly drawn plans, that the proposals are satisfactory. In considering the proposals the Board will have regard to the principles stated in the Building Regulations.

(*c*) The recognised accommodation, *i.e.* the maximum number of scholars for which the premises are suitable, will be determined by the Board, in the case of new buildings or of alterations or enlargements, from the approved plans.

In the case of alterations to offices or sanitary conveniences the Board may call for further information before approving the proposals. Minor alterations may be made without the submission of plans to the Board, if the approval of the Inspector has been previously obtained by the Local Education Authority, and, in the

* The Building Regulations (Cd. 7516 of 1914) are published separately, and may be obtained, price 2*d.*, by post 3*d.*, through any bookseller or directly from H.M. Stationery Office, Imperial House, Kingsway, London, W.C. 2.

case of Voluntary Schools, by the Managers. But no alteration of the premises of a school will be regarded as a minor alteration if it affects the area of the rooms used for teaching, or diminishes the light, or if it is proposed to meet the cost out of a loan.

18. The premises of the school must be healthy, safe in case of fire, must have suitable and sufficient sanitary and cloak-room accommodation for the scholars in attendance and for teachers, must be adequately lighted, warmed, ventilated, cleaned and drained, must be kept in proper repair, and must be sufficient, convenient, and suitably arranged for the instruction of the children in attendance according to their age.

19. The average number of scholars in attendance must not exceed the recognised accommodation, and no room may be habitually used for a larger number of scholars than that for which it is passed by the Board.

The recognised accommodation of a school or department may from time to time be revised by the Board.

20. The school must be adequately and suitably equipped with the apparatus requisite for its curriculum, including desks, furniture, books, and maps. Provision should be made for securing an adequate supply of suitable books for the course of general reading in the higher classes of the schools, and for bringing to the notice of the scholars such agencies as may assist them in the continuation of their studies in after life. Dictionaries and Atlases should be provided for the scholars in the higher classes. In cases where the school does not possess a school library, arrangements should be made to supply books for the reading of the scholars by co-operation with organisations existing for the purpose or otherwise.

CHAPTER IV.

Inspection and Reports.

21. Every Public Elementary School is inspected from time to time by the Board. An Inspector may visit at any time any Public Elementary School or place where the scholars of a Public Elementary School are receiving instruction under the Code.

22. A school will not necessarily receive a formal visit of inspection or be made the subject of a detailed report by the Inspector each year, but every school will be so visited and reported upon from time to time. (*See Article* 50.)

23. Any Report on the school sent by the Board to the Local Education Authority, or to the Managers, together with any remarks made thereon by the Board for communication to the Local Education Authority, or to the Managers, must as soon as received be entered in full in the Log Book and signed by the Correspondent.

24. The term "inspector," where used in this Code, means exclusively one of His Majesty's Inspectors of Schools or any other person employed by the Board for the purpose of inspection.

CHAPTER V.

(See page 418.)

Exchequer Grants in Aid and Recognition of Public Elementary Schools.

CHAPTER VII.

Attendance, School Meetings, etc.

43. "Attendance" for the purpose of ascertaining the average attendance of a school may be reckoned only in accordance with the regulations of this and the following Article. The registration of attendances must comply with the rules of Schedule IV.

(*a*)—(i.) No attendance may be reckoned for a scholar who is under three years of age;

(ii.) No attendance may be reckoned for a scholar for whom the Authority is not authorised to provide instruction in a Public Elementary School. (§22 (2) *Education Act*, 1902, § 2 *Education* (*Administrative Provisions*) *Act*, 1911, *and* § 8 (5) *Education Act*, 1918.)

(*b*) No attendance of any scholar may be reckoned unless he has received at least one and a half hours of secular instruction in the case of a school or class for infants, or two hours in the case of a school or class for older scholars, in each case inclusive of the necessary recreation. (*Article* 44 (*e*).)

(*c*) (*Cancelled.*)

(*d*) In schools, other than Marine schools, which, under Section 15 of the Education Act, 1902, are not maintained by the Local Education Authority, the attendances of children who are not resident in the institution will not be recognised for grant. This restriction will not apply in the case of any such children who have been attending the school before 1st August, 1905.

(*e*) No attendance for the purpose of this Article may be reckoned for a scholar at any meeting at which he is employed as a Monitor (*Article* 11 (*f*)); and his attendance must be marked as provided for by Rule 21 of Schedule IV.

44. In making up the minimum time required under Article 43 (*b*) in order that an attendance may be reckoned there may be included—

(*a*) any time occupied by secular instruction, according to the approved Time Table, given to the scholars elsewhere than at the school ;

(*b*) any time occupied by visits paid during the school hours to places of educational value or interest, or by field work, or by rambles.

Notice of the time and place must be sent to the Inspector, but his previous sanction will not be required where the Local Education Authority have, in consultation with him, made satisfactory arrangements for sanctioning and regulating work done under this provision ;

(*c*) any time occupied by a central examination (other than for Labour Certificates) attended by scholars with the sanction of the Inpector, provided that the time allowed for examination be not less than one hour and a half ;

(*d*) any time occupied in attending at a Training College or Pupil-Teacher Centre, or other place approved by the Board for the purpose of model or criticism lessons ;

(*e*) the necessary period for recreation.

The period for recreation, in the case of infants under five years of age, must be fifteen minutes, and may be extended to half an hour ; and in the case of scholars over five years of age, must be ten minutes. More recreation may be given, but only when the period of secular instruction, inclusive of recreation, is prolonged beyond the necessary one and a half, or two hours ;

(*f*) a period occupied during the school hours under arrangements approved by the Local Education Authority in properly organised games for older children under competent supervision and instruction ;

The period so occupied must be confined to one morning or one afternoon in each week and must be not less than half an hour or more than two continuous hours, exclusive of the time, if any, spent in going to or returning from the playing-field.

(*g*) any time spent during the ordinary school term under arrangements and according to a Time Table approved by the Board at an open-air school, school camp, or other place selected with a view to an improvement of the health and physical condition of the children, or upon a school journey ;

(*h*) Any period during the school hours occupied by the medical inspection of scholars who are not excluded from School under Article 53 (*b*), provided that such inspection is conducted under the authority of the Local Education Authority under Section 13 (1) (*b*) of the Education (Administrative Provisions) Act, 1907, in the school premises or (in special circumstances) in some other place appointed for the purpose by the Local Education Authority with the approval of the Board.

(*i*) Any period during the school hours occupied by the medical treatment of scholars who are not excluded from School under Article 53 (*b*), provided that such treatment is given under the authority of the Local Education Authority and under the supervision of their School Medical Officer in a place approved by the Board, and in accordance with arrangements sanctioned by the Board under Section 13 (1) (*b*) of the Education (Administrative Provisions) Act, 1907.

Any place approved for the purposes of Article 44 (*h*) or (*i*) shall be termed an "approved place."

45. The school or department must have met not less than 400 times in the year.

(*a*) If the School has been on the list of Public Elementary Schools for a period less than 12 months, the number of meetings required under this Article will be altered in proportion to the length of the period.

(*b*) If the requisite number of meetings has not been held owing to a closure of the school under Article 57, or under the advice or with the approval of the School Medical Officer, or for any other unavoidable cause, a smaller number of meetings may be accepted, provided that the requirements of this Article are satisfied after an allowance of 9 meetings has been made for each week of such closure.

For the purposes of this Code, "School Medical Officer" means a Medical Officer named by the Local Education Authority, and recognised as such by the Board.

(*c*) In making up the required number of meetings there may be included, if necessary, the number of meetings which would ordinarily have been made during times when the School premises were temporarily used, under Section 6 of the Ballot Act, 1872, for an election, or under any other statutory power.*

In the case of Greenwich Hospital School and Marine Schools this Article will not be applied.

(*d*) Exceptions may be made to this Article with the previous consent of the Board in schools where owing to extraordinary difficulties school meetings can be held only during a certain period of the year, and the Board may attach such conditions to their consent as they think fit.

* See Art. 57, *post*, for an instance in which a school may be closed to prevent the spread of infectious disease.

46. (*a*) The "average attendance" of a school or department for any period is the quotient of the total number of attendances made during that period divided by the number of meetings during that period, a fraction of a unit being ignored or reckoned as an additional unit according as it is, or is not, less than one half.

(*b*) The average attendance in Public Elementary Schools maintained by the Authority is the sum of the average attendance of each School or department of a School so maintained. For the purposes of the Substantive Grant this average attendance must be found for each year beginning 1st April.

(*c*) If the period is shorter than twelve months the average attendance will be altered in proportion to the length of the period reckoned in months and days of a month ; a fraction of a unit in the average attendance so altered being ignored or reckoned as an additional unit, according as it is, or is not, less than one half.

CHAPTER VIII.

Miscellaneous Regulations and Conditions.

47. All Returns called for by the Board or by Parliament must be duly made.

48. The registers and other necessary school records must be properly kept, and, if required by the Board or by the Inspector who visits the school, the registers and other school documents, or any of them, must be submitted for inspection forthwith.

Rules as to the provision and use of registers and other school documents are given in Schedule IV. and must be strictly observed by managers and teachers.

49. Before grant is paid in respect of instruction given in any school or department, the Board must be satisfied, by certificates in a prescribed form, that—

(*a*) the school has been conducted as a Public Elementary School in accordance with the requirements of the Education Acts ; and

(*b*) the admission and daily attendance of the scholars have been carefully registered by, or under the supervision of the Head Teacher, and have been duly verified from time to time by the Managers, or, in the case of a school which, under Section 6 of the Education Act, 1902, has no Managers, by a responsible officer appointed by the Local Education Authority.

In the case of a school maintained by the Local Education Authority, the certificates required under this Article should be signed by three Managers (if the School has

Managers) and by some responsible officer of the Local Education Authority whose name and status have previously been notified to the Board of Education by the Clerk of the Authority. In the case of a school which, under the provisions of sec. 15 of the Education Act, 1902, is not maintained by the Local Education Authority, the certificates must be signed by three managers.

The signatures required by this Article must be autograph and manuscript.

50. Before grant is paid in respect of instruction given in any school or department, the Board must have received a certificate from an Inspector, stating that to the best of his information and belief the school or department has been conducted as a Public Elementary School in accordance with the requirements of the Education Acts. The Inspector will also certify respecting the other conditions of grant contained in this Code.

51 (*a*) The body of Managers of a Public Elementary School which is maintained by the Local Education Authority must have a Correspondent through whom any communications that may be necessary on behalf of the Managers,* with the Board or with the Local Education Authority, should be made.

(*b*) Every Public Elementary School which is not maintained by the Local Education Authority must have responsible Managers and a Correspondent.

(*c*) A paid teacher in a Public Elementary School may not be the Correspondent of that or of any other Public Elementary School, nor may he be a Manager of any Public Elementary School, unless as a member of an Education Committee he is required to serve as a Manager by the rules or standing orders governing that Committee. In no case may a paid teacher act as a Manager of a Public Elementary School in which he is employed as a teacher.

(*d*) When there is a change in the office of Correspondent, the name and full postal address of the new Correspondent should be notified to the Board as soon as possible by the outgoing Correspondent or by the Chairman or Acting Chairman of the Managers.

52. The school must not be conducted for private profit, and must not be farmed out to the teacher. The income of the school must be applied only for the purposes of Public Elementary Schools. (*Section 20, Elementary Education Act, 1876.*)

53. (*a*) No child may be refused admission to a Public Elementary School on other than reasonable grounds.

(*b*) Where the Board are satisfied (i.) that proper arrangements have been made by the Local Education Authority

* All communications from the Board in respect of the ordinary matters of control and maintenance of a Public Elementary School maintained by the Local Education Authority will, as a rule, be made to the Clerk of the Local Education Authority at such address as may be communicated to the Board for this purpose.

for enabling the School Medical Officer to ascertain and certify cases in which the exclusion of children from school is desirable, and (ii.) that the School Medical Officer has authorised the exclusion of certain children from the school

(1) on the ground that their exclusion is desirable to prevent the spread of disease, or

(2) on the ground that their uncleanly or verminous condition is detrimental to the other scholars, or

(3) on the ground that, owing to their state of health or their physical or mental defects, they are incapable of receiving proper benefit from the instruction in the school,

the exclusion of such children shall be deemed for the purposes of this Code to be exclusion on reasonable grounds.

For the purposes of this provision the Local Education Authority may direct that no children who have been excluded under the authority of the School Medical Officer or under Article 57 or who have been absent from school owing to sickness shall be re-admitted to school if the School Medical Officer is not satisfied that they can attend school without risk to themselves or others.

Every direction or authority given by the School Medical Officer must be embodied in a certificate signed by him. A copy of every certificate must be furnished to the Local Education Authority and must be produced, if required, to any Inspector or Officer of the Board's Medical Department.

(*c*) Where the Local Education Authority have so determined in the case of any school maintained by them, children who are under five years of age may be refused admission to that school.

Note to Art 53.—Refusal to admit a child should always be a matter for the decision of the managers of a school. It should not be delegated to a teacher

The Education Department have stated that they did not think managers would be justified in refusing to admit children on the ground that they were previously untaught. As regards shoeless or neglected children, they were of the same opinion. The pressure that may have to be brought upon parents to send their children in a decent condition to school will probably be best enforced by the children themselves when they come to mix with others upon whom proper care is bestowed. As regards ragged or dirty children as a class, there are so many degrees of personal neglect and of the offence which may be caused by it, that no general opinion can well be given. In such cases, if warnings failed to induce parents to send their children to school in such a condition as to satisfy the managers, it might be advisable to summon them before the magistrates, who would decide whether the objections of the managers to the children were reasonable or not.

The fact of non-residence in the school board district alone did not in the opinion of the Education Department constitute a reasonable ground for the exclusion of a child from a school so long as there was room unoccupied by the children of the district for which the school is provided. But if a school was more than full, and in order to avoid loss of grant a reduction should be made in the average attendance, excluded children should be those whose parents or guardians resided outside that for which accommodation was provided.

The fact that the particular standard in which a child would be placed is for the moment full is not regarded as a sufficient ground for refusing admission if there is accommodation for the child in the school.

Irregularity of attendance is not of itself to be considered as a reasonable ground for expelling or refusing to admit a scholar who is required to attend school. In case of scholars exempt from attendance at school, if, after endeavour by appeal to parents to secure due regularity, such scholars are grossly irregular and hence not likely to profit themselves whilst impeding the progress of others, the managers would be justified in refusing them admission. But exclusion should alway be resorted to with reserve, and when measures of persuasion have been tried and have failed.

As to the admission into a public elementary school of children from a workhouse or other institution of the board of guardians or of children boarded out by the guardians, see note on sec. 2 of the Elementary Education Act, 1900, and the case of *Gateshead Union* v. *Durham County Council* there cited (pp. 120-1.)

Serious insubordination persisted in after all the usual punishments of the school have been tried and have failed is considered to be a reasonable ground for excluding a child.

The Education Department stated that they did not consider it reasonable to require as a condition of a child's admission to a school that his brothers and sisters should also attend the school.

With regard to a case where children were sent to a public elementary school wearing medals with an inscription "We want a Board School," and were refused admission, it was stated that "the Committee of Council were of opinion that a rule which prohibits children from wearing medals which are provocative or intended to provoke, so long as it was impartially administered on both sides, was a very good rule, and sufficient reason for managers and teachers refusing to allow children wearing such medals in their schools" (67, Parliamentary Debates, 639).

It has been suggested that having regard to the decision of the House of Lords in the *case of Gateshead Union* v. *Durham County Council, cited above,* a Local Education Authority could not refuse to admit to their schools children from a certified industrial school situated within their area. The present editor does not concur in that view. The circumstances on which children are admitted and educated at an industrial school differ in important respects from those which obtain in poor law schools and in his opinion the Gateshead case does not give any conclusive guide to what should be done in the case of children coming from an industrial school. Such a case should be considered on its own particular merits.

54. (*a*) In the case of any school approved for the purpose by the Board, students from a Training College or other students or teachers undergoing training, must on request from the authorities of the College, or from the Local Education Authority, or from the Board of Education, be allowed to attend the school for the purpose of practical instruction in teaching, or for observation, on such conditions as may be approved by the Board.

(*b*) The school building of any Public Elementary School may be used free of charge outside school hours by the Board of Education for the purpose of holding an examination.

55. (*Cancelled.*)

56. Notice must be sent to the Inspector as soon as is

possible in each case, of every date upon which the school will be closed or its ordinary work suspended, whether for the holidays or for any special occasion, unless the Managers or the Local Education Authority acted without timely notice by reason of a sudden emergency. Unless it is possible to give at least seven days' clear notice of an intended closure, such notice should be given by telegram addressed to the Inspector, Board of Education, Whitehall, London.

57. If the Sanitary Authority of the district in which the school is situated, or any two members thereof acting on the advice of the Medical Officer of Health, require either the closure of the school or any department thereof or the exclusion of certain children for a specified time, with a view to preventing the spread of disease or any danger to health likely to arise from the condition of the school, such requirement must at once be complied with.*

Medical Inspection.

58 (*a*) Arrangements must be made so far as practicable for carrying out the work of medical inspection in the school premises, and the Managers shall give such reasonable facilities as are required by the Local Education Authority for the purpose.

(*b*) The Board must be satisfied that provision has been made for the Medical Inspection of all children admitted to the School in the year ending on the 31st March, and of all children between 12 and 13 years of age, together with children over 13 years of age who have not already been examined after

* With regard to the circumstances under which the closing of schools or the exclusion of particular children may be required, in order to prevent the spread of disease, see the memorandum on Medical Inspection of Children in Public Elementary Schools issued by the Board of Education on 22nd November, 1907 (Circular 576), and the supplementary memoranda issued on 22nd January, 1908 (Circular 582), and 17th August, 1908 (Circular 596), by that Board. The three can be purchased for 4*d.* from H.M.'s Stationery Office, Kingsway, London, W.C. 2.

The Public Health Act, 1875, by sec. 308, provides that "where any person sustains any damage by reason of the exercise of any of the powers of this Act in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers." In *Roberts* v. *Falmouth Urban Sanitary Authority* (L.G.C. (1888), 173; 52 J. P. 741), the plaintiff was headmaster of a British school receiving as part of his emoluments one-third of the fees paid by the children attending the school. The urban sanitary authority, in consequence of measles being prevalent in the borough, passed a resolution directing that the British school which was in the borough should be temporarily closed, and that failing this the Local Government Board would be communicated with. In consequence of this resolution the school was closed, and by the closing of the school the plaintiff lost his fees, and he claimed that as the school was closed by the sanitary authority in the exercise of powers under the Public Health Act, 1875, he was entitled to compensation under sec. 308 of that Act. On the part of the defendants, it was contended that the schools were not closed by the exercise of any of the powers under the Public Health Act, but that they were closed by reason of obligations imposed by the article of the Code of the Education Department which was similar to Article 88 of the present Code, and that therefore the claim for compensation could not be sustained. It was held that the school was closed not under the powers of the Public Health Act, but by the managers of the school in pursuance of an obligation imposed upon them by the Code of the Education Department if they wished to fulfil the conditions which must be fulfilled to entitle them to a parliamentary grant on account of the school. Judgment was accordingly given for the defendants.

reaching the age of 12. The Board will also require to be satisfied that provision has been made for the Medical Inspection of all children between 8 and 9 years of age.

59. These Regulations may be cited as the "Elementary Education Provisional Code, 1919."

L. A. SELBY-BIGGE.
Secretary of the Board of Education.

16th July, 1919.

SCHEDULE I.

Information as to Teachers.

SCHEDUE II.

Regulations for the Employment of Teachers undergoing Preliminary Education.

SCHEDULE III.

Regulations for Practical Instruction in Domestic Subjects, Dairy Work, Handicraft and Gardening.

SCHEDULE IV.

Regulations as to School Records and Registration.

SCHEDULE VI.

REGULATIONS AS TO CERTIFICATES OF PROFICIENCY.

*Extract from the Revised Regulations of March 21st, 1901. Certificates of Proficiency.**

1. Certificates of proficiency are certificates of having reached or passed any Standard prescribed by the Code. To reach or pass a Standard a child must be individually examined in reading, writing, and arithmetic in that or a higher Standard, and must pass in each of those subjects.

2. At any visit of an Inspector to any public elementary or other certified efficient school, the managers are required to admit to examination, and the Inspector to examine for a certificate of proficiency, any child over twelve years, or if the child is to be employed in agriculture under any byelaw

* The above extract from Schedule VI. of the Code will become extinct when sec. 8 of the Educational Act, 1918, comes fully into operation. That Act repeals the Elementary Education (School Attendance) Act, 1893, Amendment Act, 1899, but the repeal will be in abeyance until sec. 8 of the former Act is brought into force.

made under Section 1, Elementary Education (School Attendance) Act, 1893, Amendment Act, 1899, over eleven years of age, whether a scholar in the school or not, if the child's parent or guardian or the local authority apply for the child to be examined for such a certificate; but the Inspector is at liberty to refuse to examine any child for whose examination due provision is made elsewhere, or any child who has not been instructed for at least six months in the Standard in which he is presented, or who has failed in that Standard at an examination held in the previous three months.

3. The Inspector may, in concert with the local authority, hold such special examinations as he may think necessary of children over eleven years of age, whom their parents or guardians or the local authority wish to be examined for certificates of proficiency.

Methods of Examination.

4. These examinations are not intended to be used for testing the general attainments of scholars in Public Elementary Schools, and the candidates will not be admitted to the examination by the Inspectors unless the Inspectors are satisfied that they are presented for examination for the purpose of obtaining certificates of proficiency.

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Circular to Local Education Authorities. (*Circular* 1123. 31*st July*, 1919.)

EDUCATION ACT, 1918. SECTION 9 (2.)

Regulations (issued by the Board of Education) for refusing admission to Public Elementary Schools except at the commencement of a School Term.

1. Sub-section 9 (2) of the Education Act, 1918, provides as follows :—(*see p.* 364, *ante*).

The sub-section came into force on the 1st February, 1919.

2. From correspondence which has taken place, the Board find that Local Education Authorities who wish to make regulations under the sub-section have found a considerable amount of difficulty in doing so. The Board therefore think that some suggestions on their part will be useful, and have prepared the draft regulations accompanying this Circular—not as a model, but as illustrating the kind of regulations which they would be prepared to approve, and also indicating the main points which Authorities will probably find it necessary to take into consideration.

3. A regulation providing for the general refusal of admission in all cases except at the beginning of a term, would, in the opinion of the Board, be unworkable, and it is assumed that Authorities will wish to discourage as far as possible the transfer of children from one school to another in the same locality without reasonable cause, while at the same time giving special consideration to certain classes of children, *e.g.*—

(*a*) Children who have already been at school, but migrate into the area of the Authority or into a new part of the same area :

(*b*) Young children beginning their school life.

4.—(i.) It is of course desirable that the education of migrating children should be interrupted as little as possible, and that they should be allowed to enter the school in the new locality without delay. If, therefore, the regulations take the form of a general refusal of admission except at the commencement of a school term, an exception will be required in the case of these children. *See* (*c*) of the attached regulations.

(ii.) Similarly, an exception will require to be made in the case of the children who are prevented from attending at the beginning of a term owing to absence from home, sickness, or other unavoidable causes. *See* Regulation (*d*).

(iii.) Cases may also occur where children are ordered by a Court of Law to attend a particular school and it may be useful to provide specially for them as in Regulation (*b*).

It is also advisable to consider what meaning is to be attached in practice to the words "Commencement of a School term." If this were taken literally as the first day of the term, hardship might be inflicted. Some Authorities have found it convenient to define it as the first school week and to refuse admission after that date. *See* Regulation (*a*).

5. Children beginning their school life may be sub-divided into—

(*a*) Young children under or just five who have not been to any school ;

(*b*) Children over five who should have been to school already, but have not :

(*c*) Children who have been to a Nursery School.

(i.) With regard to Class (*a*) different views may be taken. Some Authorities consider it undesirable to give the teachers the task of dealing at the beginning of the term with a large number of young children, none of whom have had any experience of school life. They think it preferable that the admission of young children should be spread out over the term. Such Authorities will wish to allow the admission of young children at any time, and the additional Regulation in the Note should accordingly be omitted.

(ii.) On the other hand, Authorities who do not feel the same difficulty can make use of this additional regulation, which is so drawn as not to interfere with the admission at any time of the children in Class (*b*), *i.e.*, those who have evaded the Attendance Officer. There should, of course, be no delay in getting any children of the latter class to school at the earliest possible moment.

(iii.) In the case of children coming from Nursery Schools, Authorities will probably find it convenient to admit them only at the beginning of a term.

6. As the questions which arise under Section 9 (2) of the Act are closely connected with the question of the school terms, the Board think it desirable to offer a few observations on that subject for the consideration of Authorities who are charged with the duty of fixing the school terms under Section 48 of the Act. The question of school terms affects not only the date for the admission of the children under Section 9 (2), but also the calculation of the child's age for attendance purposes under Section 9 (1). The latter sub-section provides as follows :—

> "If a child who is attending or is about to attend a public elementary school . . . . attains any year of age during the school term, the child shall not, for the

purpose of any enactment or bye-law, whether made before or after the passing of this Act, relating to school attendance, be deemed to have attained that year of age until the end of the term."

7. In the view of the Board, a school term must necessarily be a substantially continuous period of education beginning as a rule at the end of one school holiday and ending at the beginning of another school holiday: and a Local Education Authority in fixing school terms should have regard to this consideration. It is not, in the Board's opinion, open to the Authority in the exercise of their duty of fixing school terms, to include in the school term periods (*e.g.* the summer holidays), which cannot in any sense of the word be regarded as part of the school term, or to adopt purely artificial periods which have no relation to the work of the school. The section appears to the Board to proceed on the assumption that the educational year is divided into periods of instruction which are called school terms and periods of holiday, and Section 48 treats the Local Education Authority as best qualified to decide what those periods shall be.

8. Authorities who desire to have three terms can do so by making the terms begin with the first day on which the school meets after the Christmas, Easter, or Summer holidays as the case may be, and end on the last day on which the school meets before the next of such holiday periods. If four terms are preferred, a convenient arrangement may be to adopt the practice already followed in some areas of making a break in the Autumn term, *e.g.* about the end of October.

Either arrangement need cause no alteration in the times of the ordinary school holidays, which in many places are determined by the date of harvest or other local conditions.

9. It is desirable that draft Regulations under sub-section (2) of Section 9 should be sent to the Board in draft before their final adoption by the Authority with a view to obtaining the Board's provisional approval. When the Regulations have been adopted by the Authority six copies should be forwarded to the Board. The Board's approval will be endorsed on one of the copies and it will be returned to the Authority. To two of the copies so forwarded a certificate signed by one of the officers mentioned in Section 43 of the Education Act, 1918, that the Regulations have been duly made by the Authority should be appended. The certificate should be in the following form:—

These Regulations were made by the Local Education Authority of the of on the day of 19 .

(Signed)

APPENDIX

REGULATIONS MADE BY THE LOCAL EDUCATION AUTHORITY UNDER SECTION 9 (2) OF THE EDUCATION ACT, 1918.

The Local Education Authority (hereinafter called the Authority) hereby make the following Regulations :—

A child who is or has been in attendance at a Public Elementary School or a Nursery School may be refused admission to any other School being a Public Elementary School in the area of the Authority, except at the commencement of a School Term, unless—

(*a*) application is made for his admission to that School within five days after the commencement of the School Term ; or

(*b*) he has been ordered by a Court of Summary Jurisdiction to attend that School ; or

(*c*) he cannot, owing to temporary or permanent change of residence, continue to attend the School he has previously been attending ; or

(*d*) he has been prevented from attending School at the commencement of the School Term by sickness, absence from home, or any unavoidable cause.

NOTE.—When the Authority have decided to admit children who have not previously attended School only at the beginning of a term, the following regulation should be added :—

A child who has not previously attended School may be refused admission to any Public Elementary School in the area of the Authority until the commencement of the School Term after he attains the age of 5 years.

[*January* 12, 1920.]

EMPLOYMENT OF CHILDREN, ENGLAND AND WALES.

THE EMPLOYMENT OF CHILDREN IN ENTERTAINMENTS RULES, 1920. (S.R.O. 1920, No. 21.)

Whereas it is provided by Section 3 of the Prevention of Cruelty to Children Act, 1904, that a licence for a child to take part in an entertainment or series of entertainments as therein mentioned may be granted if the authority granting the licence are satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments :

And whereas it is provided by Section 13 of the Education Act, 1918, that a licence under Section 3 of the Prevention of Cruelty to Children Act, 1904, to take part in any entertainment or series of entertainments shall be granted by the Local Education Authority for the purposes of Part III. of the Education Act, 1902, of the area in which the child resides, subject to such restrictions and conditions as are prescribed by rules made by the Board of Education, and may be rescinded by the Authority of any area in which it takes effect or is about to take effect if the restrictions and conditions of the licence are not observed, and, subject as aforesaid, may be varied or added to by that Authority at the request of the holder of the licence : And that the holder of a licence shall at least seven days before a child takes part in any entertainment or series of entertainments furnish the Local Education Authority of the area in which the entertainment is to take place with particulars of the licence and such other information as the Board of Education may by rules prescribe :

Now the Board of Education, in pursuance of the powers conferred on them by Section 13 of the Education Act, 1918, hereby make the following rules :—

1. An application for a licence to enable a child to take part in an entertainment or series of entertainments shall be made in writing to the Local Education Authority, signed by the parent and the employer of the child in the form contained in the First Schedule hereto, and accompanied by the documents mentioned in that Schedule. In this rule the term " parent " includes guardian and every person who is liable to maintain or has the actual custody of the child.

2. If a licence is granted by the Local Education Authority it shall be in the form and subject to the restrictions and conditions specified in the Second Schedule hereto. One print of the photograph of the child provided on the application for a licence shall be attached to the licence.
3. An application for a variation of or addition to a licence shall be made in writing to the Local Education Authority of the area in which the licence takes effect or is about to take effect and shall state the grounds on which a variation or addition is desired. No addition to or variation of a licence shall be made which renders the licence inconsistent with the provisions contained in these rules as to restrictions and conditions subject to which a licence may be granted.
4. The holder of a licence shall at least seven days before the child takes part in any entertainment or series of entertainments furnish to the Local Education Authority of the area in which the entertainment is to take place the information indicated in the Third Schedule hereto.
5. These rules shall come into operation on the 1st day of April, 1920, and may be cited as the Employment of Children in Entertainments Rules, 1920.

FIRST SCHEDULE.

Form of Application for a Licence.

Note.—This form should be in the hands of the Local Education Authority, duly completed, not less than fourteen days before the Licence is required.

Application to the Council.

State full names and postal addresses of the applicants, viz :—

(*a*) Parent, guardian, or person liable to maintain or having the actual custody of the child to whom the application relates, giving relationship to the child.

(*b*) Employer of the child.

We the above-named applicants certify that the child is resident in the area of the above-named Council as Local Education Authority for the purposes of Part III. of the Education Act, 1902, and hereby apply that a licence may be granted to the above-named employer for the said child to take part in an entertainment or series of entertainments known as for a period of from the day of 19 under Section 3 of the Prevention of Cruelty to Children Act, 1904, as amended by Section 13 of the Education Act, 1918.

We forward herewith documents relating to the said child in accordance with the note appended to this application, and we certify that the following particulars are correct :—

(1) Full name of child.

(2) Address of child.

Note.—If this is not the permanent address the permanent address should also be given.

(3) Date of birth of child.

(4) How has the child been educated during the last twelve months ? If at school, name the schools.

(5) How is the child to be educated while employed ? If not at a Public Elementary School, give particulars of the proposed arrangements.

(6) Particulars of any previous licence granted by a Local Education Authority for the child to take part in an entertainment or series of entertainments, giving the date of the licence, the place at which, and the Authority by whom it was granted, and the period for which it was held.

(7) Has any previous application for such a licence been refused by a Local Education Authority ? If so, the grounds, if any, of refusal should be stated.

(8) Nature of the entertainment for which a licence is required.

(9) Approximate time for which the child will be on the stage, and, if the times are not consecutive, duration of intervals.

(10) Name, postal address, and description of matron or other person who will be in charge of the child while employed.

Signed

Parent, guardian, or person liable to maintain or having the actual custody of the child.

Employer of the child.

NOTE.—The following documents must accompany the application :—

(*a*) A birth certificate or other evidence of the age of the child.

(*b*) Two identical prints (unmounted if possible) of a photograph of the child taken within the last six months.

(*c*) A certificate from the School Medical Officer of the Local Education Authority that the child may be employed in the manner proposed without prejudice to his or her health or physical development and that the employment will not render the child unfit to obtain proper benefit from his [her] education.

(*d*) A report as to the child's educational attainments, to be obtained, if possible, from the head teacher of the last school which the child has attended, or (if the child has not attended a school) from the last teacher of the child.

SECOND SCHEDULE.

Form of Licence.

The Council, in pursuance of an application relating to (hereinafter called the child, whose photograph is attached hereto) residing at in the area for which the Council are the Local Education Authority for the purposes of Part III. of the Education Act, 1902, hereby grant to a licence for the child to be employed and take part in an entertainment or series of entertainments known as for a period of from the day of 19 subject nevertheless to the following conditions and restrictions :—

Note.—The period inserted above must not exceed six calendar months.

1. The child shall leave the theatre not later than 15 minutes after the end of his [her] part in the entertainment, and in no event later than p.m.

   Note.—The time mentioned in this condition must not be later than 10 *p.m. unless the Local Education Authority are satisfied that the retention of the child up to a later hour is absolutely necessary for the performance, in which case the Authority may extend the time for leaving the theatre to not later than* 11 *p.m., subject to such conditions as they think necessary for the welfare of the child.*

2. The child shall be granted the following holiday during the currency of this licence :—

   Note.—The period of holiday, if any, required by the Local Education Authority must be inserted.

3. The child shall not be employed in or take part in any entertainment unless the School Medical Officer of the Local Education Authority certifies that he [she] may be so employed without prejudice to his [her] health or physical development, and that the employment will not render the child unfit to obtain the proper benefit from his [her] education. For that purpose the child shall be submitted to examination by the School Medical Officer after the first examination at intervals of not more than three calendar months. A Local Education Authority may also direct that the child shall be examined by their School Medical Officer on such other occasions as they think proper, and any such directions shall be complied with. For the purposes of this Article the examination shall be by

the School Medical Officer of the area in which the licence is granted or by the School Medical Officer of any area in which the licence is to take effect.

4. The child shall not be employed in any place of entertainment unless that place is approved for the purpose by the Local Education Authority of the area in which it is situated, and in determining whether such approval shall be given the Authority shall have regard to the provision of proper dressing-rooms exclusively allocated to the children to be employed and of satisfactory and suitable sanitary arrangements, and generally to the health, comfort, and moral protection of the children.

5. The child (if not living with his [her] parent or other person *in loco parentis*) shall not be employed unless he [she] is in the care of a matron, governess or other fit person, who shall be responsible for his [her] welfare and shall accompany him [her] to and from the place of entertainment, and shall be the medium through whom any communications, written or otherwise, to him [her] at the place of entertainment shall be made. Such person must be approved either by the Authority granting this licence or by the Authority of some area in which it takes effect. The child, if living with his [her] parent or other person *in loco parentis*, shall be accompanied home from the place of entertainment by some fit person.

6. The child shall not be employed on any day unless he [she] is living under conditions and in premises approved by the Local Education Authority of the area in which the entertainment is to take place and the Authority may attach such reasonable terms to their approval as they think fit: Provided that, if the child lives with his [her] parent or other person *in loco parentis*, this condition shall apply to the child only if on tour.

7. The child shall not without the permission of the Local Education Authority, or such officer of that Authority as the Authority appoint, take part in an entertainment during any school term on any day other than Saturday unless he [she] has made two attendances on that day at a school approved for the purpose by the Authority or has been receiving education from a teacher approved for the purpose by the Authority granting this licence in accordance with a time-table similarly approved: Provided that such time-table may be modified

with the approval of the Local Education Authority of any area in which the child takes part in an entertainment. In this Article the expression "school term" means the school term as fixed for Public Elementary Schools in the area in which the entertainment takes place, or any other period accepted by the Local Education Authority of that area as the school term for any particular child.

8. The person in charge of the child shall keep such records of the scheme of work on which he [she] is engaged at school and of attendances and work done at school as may be required by the Board of Education, and these records shall be produced if required to the Authority of any area in which the licence takes effect or to the teacher of a school which the child attends.

9. This licence shall be produced at the place of entertainment at all reasonable hours when required by an authorised officer of the Local Education Authority of the area in which it takes effect.

Given under the seal of the Council this day of 19 .

THIRD SCHEDULE.

Information to be furnished to the Local Education Authority of the Area in which the Entertainment is to take place.

1. Particulars of the licence.
2. Place of entertainment where the child is to be employed in the area of the Authority.
3. Address of house where the child and the matron or other person in charge will lodge, with name of householder.
4. Dates and hours of entertainment in the area of the Authority.
5. Time for which the child will be on the stage, and, if the times are not consecutive, duration of intervals.
6. Name and description of matron or other person in charge of the child.
7. Proposed manner in which the child will be educated while employed in the area of the Authority. If not at a Public Elementary School, particulars must be given of the arrangements.

Given under the Seal of Office of the Board of Education this 12th day of January, 1920.

(L.S.) *L. A. Selby-Bigge,*
Secretary to the Board of Education.

Circular to Local Education Authorities (somewhat abridged).—Board of Education. Circular 1147.

[*20th January*, 1920.]

LICENSING OF CHILDREN TO TAKE PART IN ENTERTAINMENTS.

SIR,

1. I AM directed by the Board of Education to forward for the information of the Local Education Authority—

(*a*) A copy of an Order under section 52 of the Education Act, 1918, fixing the first day of April 1920 as the Appointed Day for the purposes of sub-section (2) of section 13 of the Education Act, 1918, except paragraph (iii.) of that sub-section, and fixing the eighth day of August 1921 as the Appointed Day for the purposes of paragraph (iii.). It will be remembered that, under the proviso to sub-section (3) of section 52 of the Act, the Appointed Day for the purposes of paragraph (iii.) must not be earlier than three years after the passing of the Act.

(*b*) A copy of the Report of the Committee appointed by the President of the Board of Education to advise the Board as to the Rules which they should make with reference to Licences to take part in entertainments under the Prevention of Cruelty to Children Act, 1904, as amended by section 13 (2) of the Education Act, 1918. [Cd. 1919, No. 484, price 3d.]

(*c*) A copy of the Rules made by the Board of Education under paragraphs (iv.) and (v.) of sub-section (2) of section 13 of the Education Act, 1918, entitled "The Employment of Children in Entertainments Rules, 1920."

2. All these documents are concerned generally with the transfer to the Local Education Authority for the purposes of Part III of the Education Act, 1902, of the powers hitherto possessed by a Petty Sessional Court under section 3 of the Prevention of Cruelty to Children Act, 1904, of licensing children to take part in entertainments. The law on the subject is not free from complication, and I am to invite the attention of the Authority to the statement of the law contained in paragraphs 4 to 16 of the Report of the Committee above mentioned.*

4. [Dealing with a recommendation of the Committee that it should be a condition of any licence that "the periods of holiday must be so arranged that the child shall have at least

*See the statement on p. 623, *post*.

12 weeks' holiday in the calendar year," the circular states as follows :—]

The Board are fully in accordance with the view that ample holidays should be given to children engaged in theatrical employment, and they hope that Local Education Authorities, in granting licences, will invariably give careful attention to this point. They have felt, however, that it would be unwise to fix a minimum period of 12 weeks' holiday owing to the very great variety of the circumstances in which children are employed, and they think it possible that the fixing of a purely mechanical limit might have the effect of distracting the attention of the Authority from a careful consideration of the requirements and needs of the individual child. It is important to observe that in connection with an application for a licence it is quite as necessary to consider what holidays the child has had in the past as to decide what holidays he will have in the future, and the settlement of the second question must necessarily be determined to a considerable degree by the answer to the first. The Board agree with the majority of the Committee that a 12 weeks' holiday at least should be the general rule, but they would urge upon Authorities the importance of carefully investigating the whole of the circumstances in the exercise of their power to decide what holidays shall be afforded to the child.

5. . . . On the question whether the children may, during the school term, be employed at matinées the Board have taken the view that this is a question which can be decided under the general law, and which should be so decided.

6. The Board would commend the Report of the Committee to the careful consideration of the Authority. Subject to two exceptions, the Board are in general agreement with the terms of the Report, and they do not propose in the present Circular to discuss at length the objects and the reasons of the various conditions which have been inserted in the Rules. As matters of practical importance I am, however, to call the special attention of the Authority to paragraphs 41 and 45, and to certain further points with which it was not necessary to deal fully in the Report.

7. Under section 13 of the Education Act, 1918, the Authority to grant the licence is the Local Education Authority for the purposes of Part III. of the Education Act, 1902, of the area in which the child resides. The Local Education Authority must satisfy themselves in granting a licence that the child is in fact resident in their area. In the case of children who from the nature of their occupation are likely to change their residence frequently from place to place, it is impor-

tant not to adopt too narrow or technical a view of what constitutes residence. On the other hand it is important to be careful lest applications should be made in the area of an authority other than the authority of the child's residence owing to the belief that for some reason the Authority of the area of residence would be indisposed to grant a licence. The question of residence is a question of fact, and it is important that the Authority to whom an application is made for a licence should satisfy themselves in case of doubt that the child is at any rate not definitely resident in some other area.

8. The Rules do not expressly require the presence of the child on the occasion when application is made for a licence, but it is assumed that, save under the most exceptional circumstances, the persons dealing with the application will insist on seeing the child or children for whom a licence is desired. Questions addressed to the child itself will afford one of the best means of determining the propriety of granting a licence.

9. With regard to Condition 5 of the Form of Licence now prescribed, the Matron, Governess, or other fit person who is to be responsible for the welfare of the children must be approved by the Local Education Authority. The Board attach great importance to this point, and, with a view to assisting Local Education Authorities in the exercise of their functions, propose themselves to take steps for establishing a list of persons whom they regard as suitable for employment as Matrons, &c., under Condition 5 of the licence. Applications for enrolment on the list will be invited, and it will be open to Local Education Authorities to forward recommendations. The applicants will be given an opportunity of appearing before a Committee which will be appointed by the Board. The establishment of the list is intended for the convenience of Local Education Authorities, and will not in any way fetter their discretion to approve persons who are not included in the list.

10. With regard to Condition 8 of the Form of Licence, it is suggested that a scheme of work, including a list of text-books, should be drawn up by the Head Teacher of the School which the child is attending at the time when the licence is granted, and that the child should work systematically upon this scheme. The child employed in a touring company should be required to produce the scheme to the Head Teachers of the Schools attended in the course of a tour, together with exercise and note-books showing the work on which he has actually been engaged. The latter could then be initialled, corrected and checked by the teachers in the schools which the child attends, and the

child might also be required to carry a record book showing attendance and progress week by week. These records would be open to inspection under the Rules and might form the basis of an annual report to be prepared where practicable by the child's original teacher.

11. . . . the Board desire to call attention to the importance of making inquiries as to the earnings which the children will receive and also as to the proposed manner of dealing with those earnings, with particular reference to the undesirability of allowing children to be exploited for the benefit of others. It would be desirable where possible to secure from applicants for licences an assurance that some part at any rate of the earnings of the children will be placed in a bank or otherwise preserved for their future benefit.

12. The Board have every reason to hope that the establishment of the new procedure and the present Rules will considerably improve the conditions under which children are employed on the stage. The successful enforcement of the Rules will, however, depend upon the active co-operation of the Local Education Authorities, and it is realised that the exercise of their discretion in the grant of licences will require much detailed work and a very vigilant inquiry into the cases which may come before them. The Board feel that they can confidently rely upon Local Education Authorities to discharge with efficiency and discretion the new duties which are entrusted to them.

L. A. SELBY-BIGGE.

The Statement of the Law referred to in paragraph 2 of the above letter is as follows :—

STATEMENT OF LAW.

4. Before dealing with the nature of the problem with which the Committee had to deal, it will be convenient to give a summary of the enactments bearing on the grant of licences for children to take part in public entertainments. The basis of the present law is the Prevention of Cruelty to Children Act, 1904, which enacts prohibitions against any child under 11 years of age being at any time in any premises licensed according to the law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing, or being exhibited for profit.

5. The Act authorises a Petty Sessional Court to grant a licence for such time and during such hours of the day and subject to such restrictions and conditions as the Court think fit, for any child exceeding 10 years of age to take part in any entertainment or series of entertainments to take place in premises licensed according to the law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment. The Court granting the licence must under the Act be satisfied of the fitness of the child for the purpose, and it must be shown to their satisfaction that proper provision has been made to secure the health and kind treat-

ment of the children. The Court may upon sufficient cause vary, add to, or rescind the licence.

6. The duty of seeing to the observance of the restrictions and conditions of the licence is cast by the Act of 1904 upon the inspectors and officers charged with the enforcement of the Employment of Children Act, 1903. These, under the law as now altered by the Education Act, 1918, will be officers of the Local Education Authority for elementary education, except within the City of London. The applicant for a licence must give at least 7 days' notice of his proposed application to the local police, and when a licence is granted a copy must be sent forthwith to the local authority for the district in which it is to take effect.

7. A licence under the Act of 1904 is sufficient protection to all persons acting under or in accordance with the same, that is to say, it takes effect notwithstanding the prohibition contained in the Act against children being in places of public entertainment or amusement and notwithstanding the prohibitions and restrictions contained in the Employment of Children Act, 1903, or in any byelaw thereunder. But the licence does not in any way exempt the child or the parent or employer from the requirements of the law relating to education.

8. The Employment of Children Act, 1903, authorised local authorities to make byelaws, subject to confirmation by the Home Office, restricting and regulating the ages and hours of employment of children and prohibiting or further restricting the employment of children in any specified occupations. The Act also prohibited generally the employment of a child under 14 between the hours of nine in the evening and six in the morning, subject to variation of these hours by byelaw.

9. The Education Act, 1918, makes numerous changes in the law contained in the above-mentioned Acts of 1903 and 1904 which are relevant to the present enquiry. In the first place sub-sec. 1 of sec. 13 repeals the prohibition contained in the Employment of Children Act, 1903, against employment between nine in the evening and six in the morning and substitutes provisions under which a child under the age of 12 is not to be employed at all, and a child between the ages of 12 and 14 is not to be employed on any Sunday for more than two hours, or on any day on which he is required to attend school before the close of school hours on that day, nor on any day before 6 o'clock in the morning or after 8 o'clock in the evening. These provisions are subject to a limited power of modification by byelaw.

10. Under sub-sec. 2 of sec. 13 of the Act of 1918 the prohibitions of the Act of 1904 against children being in places of public entertainment or amusement for the purpose of singing, playing, or performing, or being exhibited for profit, are extended to all children under the age of 12 years instead of 11. By the same sub-section the minimum age of a child who may be licensed to take part in entertainments is raised from 10 to 12.

11. It is also provided by sec. 13 (2) of the Act of 1918, that a licence for a child to take part in an entertainment or series of entertainments shall be granted by the Local Education Authority for the purposes of Part III. of the Education Act, 1902 (*i.e.* the Authority for elementary education), of the area in which the child resides, instead of by a Petty Sessional court, subject to such restrictions and conditions as are prescribed by rules made by the Board of Education that such a licence may be rescinded by the Local Education Authority of any area in which it takes effect or is about to take effect if the restrictions and conditions are not observed; and that, subject to the prescribed restriction and conditions, such a licence may be varied or added to by the Local Education Authority of any area in which it takes effect or is about to take effect at the request of the holder of

the licence. The result of these changes is that, whereas under the previous law the effect of a licence granted by the Petty Sessional Court was necessarily confined to the area to which the jurisdiction of the Court extended, the licence will now be effectual throughout the area to which the Education Act, 1918, extends, that is to say, England and Wales, and it will not be necessary to obtain a fresh licence in each area where the child is to perform.

12. It is provided by the same sec. 13 (2) of the Education Act, 1918, that the holder of a licence shall, at least seven days before the child takes part in any entertainment or series of entertainments, furnish the Local Education Authority of the area in which the entertainment is to take place with particulars of the licence, and such other information as the Board of Education may by rules prescribe. The section repeals the obligation to give notice to the local police of an application for a licence, and to send a copy of the licence to the local authority for the district in which the licence is to take effect, the latter obligation being superseded by the obligation just mentioned of furnishing particulars and information.

13. The same sec. 13 (2) provides that, if the applicant for a licence or a person to whom a licence has been granted feels aggrieved by any decision of a Local Education Authority, he may appeal to the Board of Education, who may thereupon exercise any of the powers conferred on a Local Education Authority by the section.

14. The material provisions of sec. 13 of the Education Act, 1918, will come into force at a date to be fixed by the Board of Education at their discretion, subject to this qualification, that the raising of the minimum age of children to whom licences may be granted from 10 to 12 cannot take effect until three years after the passing of the Act, that is to say, until the 8th August, 1921.

15. Assuming that, subject only to the exception just mentioned, the Board of Education appoint an early day for sec. 13 of the Act to come into operation, the need of a licence before a child can take part in public entertainments will arise on the following grounds :—

(*a*) Because under the Act of 1904 as altered, a child under the age of 12 may not at any time be in places of public entertainment or amusement for the purpose of singing, playing, or performing, or being exhibited for profit.

(*b*) Because under the Act of 1903 as altered, a child under the age of 12 may not be employed,

(*c*) Because under the Act of 1903 as altered, a child between the ages of 12 and 14 may not be employed on any day after 8 o'clock in the evening.

(*d*) Because the employment of a child under the age of 14 in public entertainments may infringe local bye-laws made under the Act of 1903.

16. It is probable that one result of the changes in the law effected by the Act of 1918 will be, until the expiration of three years from the passing of the Act, to increase the number of children who will require licences. This follows in the first place from the fact that under the altered law an unlicensed child under the age of 12 cannot be employed at all and consequently cannot take part in public entertainments even in the day-time, whereas under the law hitherto in force a child between 11 and 12 could take part in public entertainments at any time before nine in the evening without a licence ; and secondly, from the fact that the hour up to which a child between 12 and 14 years of age may be employed is put back from nine to eight in the evening, so that licences will be required for children who take music hall turns or otherwise appear on the stage between eight and nine o'clock.

ORDER, DATED JANUARY 23, 1920, MADE BY THE BOARD OF EDUCATION UNDER SECTION 18 (1) OF THE EDUCATION ACT, 1918 (8 & 9 GEO. V., C. 39), AS TO MEDICAL INSPECTION OF SCHOOLS AND EDUCATIONAL INSTITUTIONS. (*Statutory Rules and Orders*, 1920, *No.* 101.)

ENGLAND AND WALES.

Whereas by paragraph (*b*) of Sub-section (1) of Section 13 of the Education (Administrative Provisions) Act, 1907, it is enacted that the powers and duties of a Local Education Authority under Part III. of the Education Act, 1902, shall include the duty to provide for the medical inspection of children immediately before or at the time of or as soon as possible after their admission to a public elementary school, and on such other occasions as the Board of Education direct, and the power to make such arrangements as may be sanctioned by the Board of Education for attending to the health and physical condition of the children educated in public elementary schools:

And whereas by Sub-section (1) of Section 18 of the Education Act, 1918 (hereinafter referred to as the Act), it is enacted that . . . (see p. 379).

And whereas the Board of Education pursuant to the Act have appointed—

(*a*) the date of the passing of the Act as the appointed day for the purposes of Section 18 of the Act, except in so far as it imposes a duty on Local Education Authorities; and

(*b*) the first day of April, 1920, as the appointed day for the purposes of Section 18 of the Act so far as not already in operation:

Now the Board of Education, in exercise of their powers under Sub-section (1) of Section 18 of the Act, and the provisions incorporated therein, hereby direct as follows:—

(1) The duties of a Local Education Authority with reference to medical inspection under Sub-section (1) of Section 18 of the Act shall extend to—

(*a*) all pupil-teacher centres and preparatory classes provided by that authority and recognised under the regulations of the Board of Education for the training of teachers for the time being in force; and

(*b*) certain schools and institutions provided by that authority and recognised under the regulations of the Board of Education for technical schools and other forms of provision of further education for the time being in force, that is to say, all junior technical

schools so provided and recognised and those full-time day technical classes so provided and recognised which provide courses of at least one year in duration for pupils who will leave at or about 15 or 16 years of age.

(2) The powers of a Local Education Authority with reference to medical inspection and treatment under Sub-section (1) of Section 18 of the Act shall extend to all schools or educational institutions (not being elementary schools) provided by that authority in addition to the schools expressly specified in that sub-section.

(3) The occasions on which a Local Education Authority shall provide for the medical inspection of children and young persons in pursuance of their duties under Sub-section (1) of Section 18 of the Act, and may so provide in pursuance of their powers under that sub-section, in addition to the occasion of the admission of pupils to the school or institution, shall include one occasion in each subsequent year of their age during the period of their attendance, except that the duty of providing for this annual inspection shall not extend to pupils below the age of 12 years.

Given under the Seal of Office of the Board of Education this 23rd day of Janauary, 1920.

L. A. SELBY-BIGGE.

In connection with this Order the Circular 1136, dated 28th November, 1919, should be read. It will be found on p. 656.

Circular to Local Education Authorities, Secondary Schools and Training Colleges. (*Circular* 1036, 15*th March,* 1918.)

GRANTS FOR TRAINING OF TEACHERS.

The Board of Education have been considering the Regulations under which Grant is at present paid in aid of the training of teachers for work in different types of schools. They are proposing to revise these Regulations so as to bring them into closer relation with each other, and to make it easier for persons trained under any of them to take up work in any type of approved school for which they may be found to be suitable.

The following changes are accordingly proposed :—

(1.) The Declaration required of candidates for recognition as Bursars, Pupil-Teachers or Student-Teachers, will in future be a declaration of intention to become a teacher in an approved school, instead of being, as hitherto, a declaration of intention to become a teacher in a Public Elementary School. The term "approved school" will for this purpose have the same meaning as it has for the purpose of the student's Undertaking.

(2.) The terms of the student's Undertaking will remain the same as at present, but the Board will be prepared to accept teaching service in any "approved" teaching institution of whatever grade in the United Kingdom as satisfying the Undertaking. On the other hand, all students who sign the Undertaking will be expected to do so on the understanding that they are bound to teach in any type of "approved" school in which work may be open to them, and that they cannot claim exemption from their obligation by reason of the fact that they have not found themselves able to obtain a post in the type of Teaching Institution which they would specially prefer.

(3.) Training Colleges which receive aid under the Regulations for the Training of Teachers for Elementary Schools are required under those Regulations to aim at preparing their students to serve as Certificated Teachers in Public Elementary Schools and to plan their organisation and curriculum accordingly. Similarly the provisions under which grants are paid for students taking a Four Years' Course in Elementary Training Departments of Universities require that the fourth year of such a Course is to be devoted wholly to professional training in preparation for the work of teaching in public elementary schools. It has, however, been found in practice that the course of academic

education and professional training given in such institutions may also afford a suitable preparation for teaching in other types of schools covered by the Undertaking, and do in fact lead up to service in such schools. Questions have thus arisen as to how far students may properly avail themselves of the assistance offered under these Regulations if it is their desire to obtain posts in schools other than Elementary schools. The Board propose in future to deal with this question on the following lines :—

(*a*) The authorities of any of the institutions referred to in this paragraph may admit students who intend to take up work in any type of school covered by the Undertaking, and may in arranging the course of training for a particular student have regard to the possibility that that student may teach in some type of school other than in a public elementary school, provided that any such modifications of the course which may be allowed in the case of individual students are not inconsistent with the general aim of the institution as defined in the Board's Regulations.

(*b*) It is found that among the students who enter Elementary Training Departments connected with Universities there are a certain number who, so far as their academic attainments go, would be well qualified to take posts as teachers in secondary schools or in other institutions giving higher education where specialisation may be required, and who might in the opinion of the University Authorities usefully follow a course of professional training which, while insisting on the element which is common to all forms of preparation for the teaching profession, would be specialised with a view to work of this kind. The Board will be prepared in special cases to allow such students, if they desire it, to take a year of specialised professional training in a Secondary Training Department of a University or in a Secondary Training College, or other institution providing specialised professional training, instead of following the ordinary course of training prescribed for students in the Elementary Training Departments. An application for this purpose will only be entertained if it is supported by the University Authorities and if the student has obtained a University Degree in Honours.

L. A. SELBY-BIGGE.

Circular. Poor Law Authorities.

LOCAL GOVERNMENT BOARD, Whitehall, S.W. 1.

20th June, 1919.

SIR, INSTRUCTION OF POOR LAW CHILDREN.

I am directed by the President of the Local Government Board to state that the Department in consultation with the Board of Education have had under consideration the extent to which the provisions made by the General Order of the 30th January, 1897, in regard to the instruction of children who receive their education in a school provided by a poor law authority, are affected by later legislation and especially by the Education Act, 1918.

The Order of 1897 has no application to any child receiving instruction in a public elementary school, and at the present time the number of schools to which a revised Order would be applicable is comparatively small. In the circumstances the Board think it will be sufficient in lieu of making a new General Order to indicate by this Circular Letter the modifications subject to which the Order should now, or as the provisions of the Act of 1918 are brought into force, be read.

(1.) The Order applies to children of school age, and the upward limit of fourteen years will no longer be in all cases effective since (*a*) instruction is now to be continued till the end of the school term in which a child reaches the age of fourteen and (*b*) a Local Education Authority may, after a day appointed by the Board of Education, extend the school age within their area to fifteen years.

(2.) Partial exemption from the obligation to attend school is no longer permissible and accordingly all children of school age must make full daily attendances. A part of those attendances (not exceeding one hour in the case of children under twelve and three hours in the case of older children) may, however, be devoted to practical instruction, and Article V. of the Order will cease to have effect.

Applications have from time to time been received for assent to the adoption, notwithstanding the terms of Article VIII. of the Order, of the same term and holiday periods as those fixed by the Local Education Authority for the area in which the poor law school is situated. In Dr. Addison's view there is considerable advantage in this course, and in any case in which its adoption may in the future be desired, assent is hereby given.

Some extension of the Regulations may be necessary before the provision of the Act of 1918 relating to the education of young persons comes into force, but at the present stage the Board think it desirable to defer the consideration of this matter.

I am, Sir, Your obedient Servant,

A. B. LOWRY, *Assistant Secretary.*

The Clerk to the Poor Law Authority.

Circular to Local Education Authorities. Circular 1118.
2nd July, 1919.

THE APPOINTED DAY: CONTINUATION SCHOOLS, ETC.

SIR,

1. I AM directed by the Board of Education to enclose a copy of an Order which has been made by the Board under Section 52 of the Education Act, 1918, appointing the 1st day of August, 1919, as the Appointed Day on which the following portions of the Act are to come into operation :—

Sections 1 to 5 inclusive.

Sub-sections (4) and (5) of Section 8.

2. *Sections 1 to* 5.—The fixing of an Appointed Day for these Sections—

(*a*) makes operative the *general obligation* of Local Education Authorities to provide for the progressive development and comprehensive organisation of education in respect of their areas; to exercise their powers under Part III. of the Act of 1902 in the manner directed by Section 2 of the Act of 1918, and to provide for the establishment of a system of continuation schools, which cannot, of course, be worked on a basis of obligatory attendance until Sections 10 to 12 of the Act are operative;

(*b*) enables Local Education Authorities to submit schemes for the purposes specified subject to the provisions of Section 4; and

(*c*) enables the Board to require the submission of schemes under the sections.

3. As regards Section 10 to 12, the Board do not at present feel that they would be justified in fixing an early date for the Appointed Day, or in attempting to make that date uniform for all areas. Different dates may be appointed under Section 52 (3) for " different areas or parts of areas and for different persons or classes of persons." The Board are anxious that any Authorities who, as a result of careful investigation, have satisfied themselves that they will be ready to commence work by a given day, should communicate this fact to the Board, and should notify them of their willingness that such date should be fixed as the Appointed Day for their areas or parts of their areas. It is clearly desirable that those Authorities who find themselves in a favourable position should be prepared to open Continuation Schools in advance of others who are faced by greater difficulties, and the Board greatly deprecate the postponement of action until it is possible to make the section operative for the whole country.

4. The Board do not propose at the present stage to make any specific requirements under the Act for the submission of schemes on a particular date, though they will be ready to consider any schemes which may be submitted to them after the 1st August. It is hoped that Authorities will proceed expeditiously with the preparation of their schemes and with the necessary arrangements for giving effect, so far as is practicable, to the provisions of the sections. While it is undesirable that schemes should be framed and submitted prematurely, it is still more undesirable that they should be unnecessarily delayed. The Board hope that in the absence of special circumstances, they may receive the schemes of the Authorities before the 31st March, 1920; and it would facilitate their consideration if the Authorities would indicate approximately the dates at which they expect to submit them.

The Board, of course, recognise that as regards Continuation Schools the proposals of the Authorities will, in the first instance, be of a tentative and provisional character, leaving the details of the plan to be filled in later as circumstances permit. In the meantime it is extremely important that as many Day Continuation Schools as possible should be established on the basis of voluntary attendance, but otherwise on the lines contemplated by the Act.

5. As regards Section 8 (5), it may be observed that under Section 22 of the Education Act, 1902, the power to provide instruction under the Elementary Education Acts, 1870 to 1900, is, except where those Acts expressly provide to the contrary, limited to the provision in a Public Elementary School of instruction given under the regulations of the Board of Education to scholars who, at the close of the school year, will not be more than 16 years of age. The section contains a provision, which has given rise to some administrative difficulty, whereby with the consent of the Board of Education a Local Education Authority may extend those limits. This provision for extension is not repealed by the Education Act, 1918, but Sub-section 8 (5) of that Act contains an alternative provision for extension which appears to be more convenient, and normally the Board will treat any application to authorise the instruction in Public Elementary Schools of scholars who at the close of the school year will be more than sixteen years of age as an application under Sub-section (5) of Section 8 of the Education Act, 1918.

6. For the convenience of Local Education Authorities a table is attached showing the provisions of the Education Act, 1918, for which appointed days have now been fixed.

I am, Sir,

Your obedient Servant,

L. A. SELBY-BIGGE.

TABLE showing the PROVISIONS of the EDUCATION ACT, 1918, for which appointed days have now been fixed.

Sections.	Date of coming into operation.
Sections 1 to 5	1 August, 1919.
Section 6	1 November, 1918.
„ 7	8 August, 1918.
„ 8 (3)	2 December, 1918.
„ 8 (4) and (5)	1 August, 1919.
„ 8 (6), (7) and (8)	8 August, 1918.
„ 9	1 February, 1919.
„ 13 (paragraphs (iii.) and (iv.) of Sub-section (1))	1 April, 1919.
„ 15	8 August, 1918.
„ 16 (except paragraphs (*c*) and (*d*))	8 August, 1918.
„ 17	8 August, 1918.
„ 18 (except so far as it imposes a duty on Local Education Authorities)	8 August, 1918.
„ 19	8 August, 1918.
„ 21	8 August, 1918.
„ 22	27 November, 1918.
Sections 23, 24 and 25	8 August, 1918.
Section 26	1 April, 1919.
„ 27	8 August, 1918.
„ 28	1 April, 1919.
Sections 29 to 37	8 August, 1918.
Section 38	2 December, 1918.
„ 39	8 August, 1918.
„ 40 (except as to inquiries pending on 8 August, 1918).	8 August, 1918.
„ 41	8 August, 1918.
„ 42	1 April, 1919.
„ 43	8 August, 1918.
„ 44 (except Sub-section (6) and so much of Sub-section (4) as refers to Small Population Grant).	1 April, 1919.
„ 44 (so much of Sub-section (4) as refers to Small Population Grant).	1 October, 1918.
„ 44 (6)	1 November, 1918.
Sections 45 to 49	8 August, 1918.
Section 52	8 August, 1918.

Sections 50 and 51 are consequential upon the other provisions of the Act and are brought into operation so far as it is necessary to give effect to them.

Since the above circular was issued the following dates have been fixed: (*Circular* 1149, *issued on the* 18*th February*, 1920.)

Section 13 (1) (i.) and (ii.)	1 April, 1920.
„ 13 (2) except (iii.)	1 April, 1920.
„ 13 (2) (iii.)	8 August, 1921.
„ 18 (except so far as it is not already in operation)	1 April, 1920.
„ 20	1 April, 1920.

MEMORANDUM AS TO SCHEMES TO BE SUBMITTED BY LOCAL EDUCATION AUTHORITIES UNDER SECTIONS 1 TO 4 OF THE EDUCATION ACT, 1918, AND SUGGESTIONS FOR THE ARRANGEMENT OF SUCH SCHEMES. (*Circular* 1119.)

BOARD OF EDUCATION.

[3*rd July* 1919.]

SIR,

1. THE Board have carefully considered the observations which have been received from Local Education Authorities upon the suggestions for the arrangement of schemes under Sections 1 to 4 of the Education Act, 1918, which were issued in draft under cover of Circular 1096. The draft suggestions have been revised in the light of the comments made by the Authorities and they are now issued in the Schedules herewith in definitive form.

2. . . . . .

3. The Board are now ready to deal with the schemes which the Authorities may from time to time submit for their approval. In order to expedite the consideration of schemes it is important that the Board should have a substantial number of copies of each scheme, and it will much assist the Board if the Authority for a County or County Borough will supply 50 copies of its scheme and if the Authority of a non-County Borough or Urban District will supply 30 copies.

4. With regard to the printing of schemes I am to say that the most suitable size for the Board's purposes is foolscap, but the Board appreciate the fact that for general use the Authority may prefer some other size such as octavo. If the Authority decides to have the type set for an octavo page in printing a scheme for local use, the Board trust that careful consideration will be given to the possibility of printing a sufficient number of copies for the Board's purposes in the centre of foolscap pages with a wide margin. If this course in any particular case is found impracticable the Board hope that it will at least be possible to supply them with the requisite number of copies specially printed on one side of the paper only or interleaved with blank pages.

I am, Sir,

Your obedient Servant,

L. A. SELBY-BIGGE,

MEMORANDUM.

1. In drawing up suggestions as to the arrangement of schemes for the consideration of Authorities it has been

thought desirable to deal separately with the three types of Authorities concerned. The suggestions applicable to a County Authority are set out in Schedule A on pages 640 to 654, those applicable to a County Borough Authority are set out in Schedule B (see page 654) and those applicable to Councils which are Local Education Authorities only for Part III. of the Education Act of 1902 are set out in Schedule C (see page 654).

The explanations which are given in the following paragraphs are intended to assist the Authorities in considering the suggestions contained in the Schedules and also indicate the Board's conception of the new duties which have been laid upon Authorities by those provisions of the Act of 1918 which relate to schemes.

Object and Scope of Schemes.

2. One of the most important purposes of the Education Act, as explained by the President of the Board of Education in the debate upon the second reading of the Bill, is to establish the principle that all forms of education shall be considered as parts of a single whole, and to secure that all Local Education Authorities, so far as their powers extend, shall contribute to the establishment of an adequate national system. The immediate purpose of the scheme procedure which is the subject of Sections 1, 2, 3 and 4 of the Act, is to encourage each Authority to make a comprehensive and systematic survey of the educational needs of its area, and to formulate a policy for the progressive development and organisation of its own educational provision in relation to national as well as to local requirements.

3. In formulating the policy which will ultimately be set out in the scheme or schemes submitted to the Board, it is obviously important that the Authority shall not take too short a view, or confine its educational vision within the limits which present resources in personnel, material, or money may suggest. The Authority should therefore approach the subject with the intention of providing a programme of educational development for a period of ten years at least. Such a programme will naturally be most precise and detailed in regard to the work proposed for the first few years of such a period, but it is now necessary to provide not merely for dealing with the arrears which have accumulated during the war, but also for the building up of a much improved national system of education : and the schemes to be submitted now, or in the near future, should therefore certainly not exclude proposals for developments which can only be carried out during the latter part of such a period as has been mentioned.

The submission of such proposals at this juncture even if only in outline, will afford a basis for deliberate consideration of future needs, and the proposals themselves can be modified and more accurately defined as the time for giving effect to them approaches.

4. It will be observed that the heads suggested in the enclosures do not include any which refer to the exercise by Local Education Authorities of their powers under Part IV. of the Children Act, 1908, in relation to Industrial Schools, the Central Authority in that case being the Secretary of State and not the Board of Education. The Authority will no doubt inform the Board if it considers that the provision for elementary education is in any way materially affected by the manner in which it exercises such powers.

5. Nor is it suggested that the scheme submitted by the Council of a County shall include proposals for the exercise by the Authority of the power to provide education in rural or agricultural subjects of the type which is supervised and aided by the Board of Agriculture and Fisheries and not by the Board of Education. It is understood that the Board of Agriculture and Fisheries will invite Local Education Authorities for county areas to submit to them schemes for the provision of agricultural education of this character. The proposals submitted to the Board of Agriculture in reply to this invitation should not be included in any scheme which is submited for the formal approval contemplated by Section 5 of the Education Act, 1918, but the Board will be glad to receive for their information only, and not as part of the scheme, a copy of the documents in which these proposals are set out. On the other hand, the Authority's proposals for the provision of rural education in Elementary and Secondary Schools, and courses in rural subjects planned for students under sixteen or seventeen as well as courses for the training of teachers employed in schools and classes aided by the Board of Education, whatever the subject of instruction may be and whatever the status of the person by whom the instruction is given, will, of course, find their appropriate places in the sheme which the Authority will submit to the Board of Education.*

STYLE AND FORM OF SCHEME.

(i.) *The Introduction to the Scheme.*

6. The Board consider it very desirable that the scheme, or the main scheme if more than one is to be submitted, which will necessarily enter into considerable detail, should

*See Article 5 (*a*) of the Regulations for Technical Schools, &c.

be prefaced by an introduction, containing, amongst other things:—

(i.) such a survey of the educational needs (so far as the powers of the Authority extend) as will indicate in broad outline the Authority's conception of the educational provision which is judged to be suitable for the area according to present-day ideals and standards:

(ii.) a summary statement showing the extent to which the existing provision covers the ground which the Authority ultimately intends to occupy: and

(iii.) a related statement arising out of the comparison of these two statements which will serve as a note, not only for the Board and for the Authority, but for other persons and bodies interested, of the work of development and expansion which is admittedly required during the next decade or thereabouts.

The success of an Authority's policy will depend to a large extent upon the measure of public interest and support which the Authority can command, and it appears to the Board to be most important, if not essential, that any general statement of the Authority's proposals and ideals which appears in the introductory matter should be set out with a view to publication and in a manner which is likely to interest parents and other bodies or persons concerned.

7. The Board also suggest that in the introduction to the scheme proper a brief account should be given of the principal characteristics of the area and of the occupations of its population. Statistical information as to the number of children and young persons for whose education the Authority will be responsible is very much to be desired for the effective consideration of the scheme. The Board will also be in a better position to appreciate the problems with which the Authority has to deal if they receive from the Authority itself an account of its general administrative arrangements. In the case of a county area, information as to its financial arrangements, with particular reference to the relations between the Part II. Authority and the autonomous Part III. Authorities in regard to Higher Education, is also of great importance.

(ii.) *The Scheme Proper.*

8. The scheme proper, to be submitted for the formal approval of the Board, will form the second part of the Authority's statement. It is recognised that some Authorities may have to present their proposals in a form different from that suggested in view of the special conditions of their areas: but it is believed that, in the majority of cases, the suggestions made in the enclosures will assist Authorities in drawing up a clear and intelligible statement of the idea I

at which they aim, as well as of the particular proposals by means of which they hope to realise those ideals. Moreover, the prompt consideration of the scheme of an Authority will be facilitated if the scheme has been drawn up in conformity with a general plan, and this advantage in the adoption of a uniform plan of arrangement should not be overlooked. It is, of course, not the intention of the Board in suggesting this plan to prescribe the contents of the scheme.

9. The suggested heads of schemes, which will be found in the enclosures, represent a somewhat close analysis of the various aspects of educational provision. The main purpose of offering these suggestions in so much detail is to indicate the principal points that in one area or another, though not necessarily in all, deserve notice and consideration in connection with the preparation of a policy for educational development. The importance to be attached to the several topics will naturally differ widely from area to area. It is recognised that some of them may not be applicable to the local conditions of particular areas, and that others must remain in the background for several years to come. On the other hand, certain heads are of obvious and universal importance, and it is expected that all Authorities will be in a position to furnish within a reasonable period a clear and full statement of their intentions in regard to these matters. There are other important heads under which practically all Authorities should be able to give at least a provisional indication of their attitude and their intentions.

10. The scheme as a whole should contain concrete and definite proposals as regards those matters which require to be dealt with during the first few years after the Appointed Day. Proposals upon the less urgent matters will, as already explained, be regarded by the Board as more provisional in character and as open to such detailed discussion at leisure as may lead to the submission of definitive proposals as the time approaches for immediate action. It is doubtless the case that some of the Authorities which have been most active and progressive of recent years may, as respects some matters of great importance, find less occasion for developments in the immediate future, or even within any period of reasonable duration. In such cases the Authority will no doubt take the opportunity of explaining the absence of any specific proposals under the heads concerned.

11. It will of course be understood that a scheme cannot conveniently set out all the details which are necessary for the purposes of the Authority's and the Board's administration. It is not desirable to overload it with particulars which, especially in branches of the educational service which are new or rapidly developing, will quickly become out

of date. Some particulars, *e.g.* those relating to the purchase of sites, and plans of buildings, must obviously be furnished from time to time as the proposals of the Authority mature. Again, the actual annual programme of Part-time Day and Evening Classes under the Regulations for Technical Schools, &c., which is required both for purposes of inspection and administration, will be more conveniently dealt with separately as a document supplementary to the scheme. The distinction between the "comprehensive and systematic plan" mentioned in Article 2 of the Revised Draft Regulations for Technical Schools, &c., and the "Annual Area Scheme" referred to in Article 15, corresponds broadly to the distinction here drawn between the contents of a scheme submitted under the Act and such supplementary detailed statements as may be subsequently required. Similarly in the sphere of the School Medical Service, where considerable developments may be expected, the administrative details of the programme of work may properly be reserved for a supplementary statement. Experience will show how the line between the scheme proper and the supplementary statements may most conveniently be drawn.

12. The Authority will realise that while the continual alteration of its scheme year by year is impracticable a periodical review of a scheme may be necessary, and there is no reason why an Authority should not from time to time revise the general or particular proposals contained in a scheme and submit them for reconsideration. Material must also be furnished at times of inspection or otherwise when required by the Board to enable the Board to judge how far actual performance is keeping pace with intention, and for this purpose a less formal and more elastic procedure than that of the statutory scheme is essential. When the scheme is approved the supplementary details will naturally be worked out by the Authority in consultation with the Board.

Additional Information not forming Part of the Scheme.

13. In view of the detailed requirements of Section 4 of the Act, it is thought that it will be convenient for the Authority, in communicating a scheme, to furnish an additional statement as to the proceedings which have led up to its submission. This statement should indicate what representations, if any, have been made to the Authority by parents or other bodies or persons interested, what measures have been adopted to ascertain their views, and what steps have been taken to give publicity to the Authority's proposals. The Council of a County should also explain the measures they have taken to consult the Part III. Authorities within

their area, and should furnish the report required to be made under Section 4 of the Act as to the co-operation which is to be anticipated from each Part III Authority in regard to matters of common interest.

Matters requiring Immediate Attention.

14. The preparation of a comprehensive scheme such as has been indicated above will require much careful consideration, and it will of course be understood that matters of pressing urgency should be taken in hand at once, and should not be postponed until the Authority is in a position to submit a scheme for the Board's approval.

SCHEDULE A.

Suggestions for the arrangement of a Scheme to be submitted under Section one of the Education Act, 1918, by the Council of a County.

I.—INTRODUCTION TO THE SCHEME.

General.

[N.B.—The information under heads 1 to 3 may with advantage be illustrated by suitable maps.]

1. A survey of the educational needs of the area, indicating, amongst other matters, the extent to which educational provision and administration are affected by any special features in its geographical, social, economic and cultural conditions.

2. A summary of the existing educational provision, indicating, amongst other matters, the extent to which the various types of education are supplied or aided by means of endowments: together with an outline statement, not burdened with detail such as will be given in the scheme itself, of the additional provision considered necessary in order that the educational needs of the area can be adequately met.

3. A statement as to the principal occupations in the Part II. area, indicating for each, in what parts of the area, if any, it is concentrated, the practice as to apprenticeship or other entry into industrial occupations, and any important changes (other than transitory changes due to war conditions), which have taken place since the last census as regards their organisation, or the number, age or sex of those engaged in them.

4. A statement as to any important changes since the last

census, or anticipated in the future, in the child population in the County Part III. area, and in the "young person" population in the County Part II. area as a whole, indicating in each case the particular localities, if any, in which a rapid rise or decline in the population is expected.

STATISTICAL.

5. An estimate of—
   (*a*) the number of children between 5 (or 6) and 14 (or 15) resident in the County Part III. area at the date of the submission of the scheme, giving the figures, if possible, at each year of age;
   (*b*) the number of such children who are attending school, distinguishing between the types of school they attend;*
   (*c*) the number of children between 5 (or 6) and 14 (or 15) resident outside the County Part III. area who are attending Public Elementary Schools maintained by the Authority;
   (*d*) the number of boys and girls over 14 (or 15) and under 5 (or 6) who are attending Public Elementary Schools maintained by the Authority.
6. An estimate, if possible at each year of age, of—
   (*a*) the number of young persons between 14 (or 15) and 18 years of age resident in the County Part II. area;
   (*b*) the number of young persons referred to in (*a*) who are attending full-time instruction in a school recognised by the Board as efficient or are otherwise under suitable and efficient full-time instruction.

ADMINISTRATIVE ARRANGEMENTS.

7. A general outline of the administrative system of the Authority, including particulars of any arrangements for co-operation or combination with other Authorities.

8. Methods of financing Elementary Education in the County Part III. area, and Higher Education in the County Part II. area, indicating, in the latter case, the arrangements as to rating in the autonomous Part III. areas, and in other districts of the County area (Section 18 (1), Education Act, 1902, and Section 36, Education Act, 1918).

9. Arrangements for controlling and testing the registration of attendances and the accuracy of returns made to the Authority or to the Board of Education.

10. Arrangements for the employment of organising teachers and for the inspection (if any) of schools.

* *e.g.*, Maintained Public Elementary Schools, Institution Schools conducted under Section 15, Education Act, 1902, Special Schools for blind, deaf, defective, or epileptic children, Poor Law Schools, Industrial Schools, Certified Efficient Schools, Private Elementary Schools, Preparatory Schools, Secondary Schools, Junior Technical Schools, &c.

11. Methods of stimulating the interest of parents and others in the work of the Schools of various types and of disseminating information as to the educational opportunities.

2.—HEADS OF SCHEME.

I. ELEMENTARY EDUCATION.

1. *Proposed Organisation of Elementary Education in the Area.*

(*a*) Provision of practical instruction suitable to the ages, abilities and requirements of the children, to be made by means of central or other special classes or otherwise, with the basis, if any, on which the amount of the provision is determined.

(*b*) Provision of advanced instruction to be made for older or more intelligent children by means of—

(i.) central schools;

(ii.) other types of provision;

and the basis, if any, on which the supply of such instruction is determined.

(*c*) Arrangements for observing and dealing with subnormal (dull or backward) children, or abnormal (stammering, shortsighted, etc.) children.

(*d*) Policy as to the size of classes.

(*e*) Principles, if any, for determining in the case of new or reconstructed schools for both boys and girls the choice between various methods of organisation into departments, *e.g.*—

(i.) infants' departments, *i.e.*, up to about 7 or 8 years of age, or junior departments, *i.e.*, up to about 9 or 10 years of age:

(ii.) mixed, dual or separate departments for older children;

and for determining the choice between men and women for Head Teacherships and Assistantships in departments of various types.

2. *Proposals for establishing and maintaining a Teaching Service adequate in Number and suitable in Qualifications for carrying out the Authority's Policy.*

(*a*) Proposed procedure for bringing into operation the Authority's policy;—

(i.) as to the size of classes, so far as it affects the total number of teachers ultimately required in the service;

(ii.) as to the standards of staffing ultimately to be established for various types of school in the area;

(iii.) as to the proportion in which the total staff ulti-

mately contemplated is to consist of Certificated Teachers, Uncertificated Teachers, and teachers of other grades, distinguishing between men and women.

(*b*) Provision for maintaining an adequate staff of Supply Teachers throughout the year.

(*c*) Provision of teachers (i.) for practical instruction and (ii.) for advanced instruction.

(*d*) Extent to which intending teachers are to be admitted as Student-Teachers or Pupil-Teachers.

(*e*) Arrangements for encouraging teachers to extend their professional knowledge by granting time off for further study, by formation of Teachers' libraries, &c.

(*f*) Proposals of the Authority as to the remuneration of teachers.

3. *Proposals as to School Accommodation and Equipment with a View to carrying out the Authority's Policy.*

(*a*) Proposals (including proposals of Managers of non-provided schools) for the better utilisation of existing school buildings, by means of the amalgamation of schools or redistribution of children, including redistribution in non-provided schools of the same denominational character in the same locality (Section 31, Education Act, 1918).

(*b*) Proposals (including proposals of Managers of non-provided schools) for dealing systematically with the provision of the school accommodation required for the carrying out of the Authority's policy by means of a programme arranged in order of urgency for—

(i.) additional schools or departments ;
(ii.) replacement of existing buildings ;
(iii.) additions to existing buildings ;
(iv.) re-modelling or improvement of existing buildings ;
(v.) provision or extension of playgrounds ;
(vi.) provision of special rooms or special centres for practical instruction ;
(vii.) provision of school gardens ;
(viii.) provision of school baths ;
(ix.) provision of teachers' houses or hostels.

(*c*) Arrangements for reaching and maintaining a proper standard as regards sufficiency and suitability of school furniture, books, apparatus and materials.

(*d*) Arrangements for providing and maintaining school libraries or for utilising juvenile sections of public libraries.

(*e*) Arrangements for the comfort and wellbeing of children coming daily from a distance.

4. *School Attendance.*

Proposed arrangements for—

(i.) ascertaining the number and distribution of children of school age in the area :

(ii.) securing regular and punctual attendance and ascertaining the cause of absence.

5. *Proposals as to Scholarships and Maintenance Allowances for Children in Public Elementary Schools over twelve years of Age.* (Section 11, Education (Administrative Provisions) Act, 1907, and Section 24, Education Act, 1918.)

6. *Proposed Arrangements for dealing with Children in Exceptional Circumstances.* (Section 21, Education Act, 1918.)

7. *Proposed Provision for administering the Law relating to the Employment of School Children.* (Sections 13 and 15, Education Act, 1918.)

(*a*) Establishment and administration of bye-laws.
(*b*) Supervision of employed children.
(*c*) Special arrangements for children employed in theatrical or other public performances.

8. *School Medical Service.*

Proposals as to constitution, organisation and development of the School Medical Service.

9. *Medical Inspection and Treatment of Children Educated in Public Elementary Schools.*

Proposals for—

(*a*) inspection of children ;
(*b*) following up ;
(*c*) treatment, *e.g.*, eyes, teeth, tonsils and adenoids, and minor ailments ; and remedial exercises ;
(*d*) dealing with uncleanliness.

10. *Other Medical Supervision of Children educated in Public Elementary Schools.*

Proposals for—

(*a*) medical observation and supervision of employed children (Section 15, Education Act, 1918) ;
(*b*) dealing in consultation with the Sanitary Authority with infectious diseases and other matters of common interest ;
(*c*) medical investigations as to subnormal (dull or back-

ward) children, or abnormal (stammering, short-sighted, etc.) children ;

(*d*) ascertaining what children (whether in attendance at school or not) are blind, deaf, physically defective or epileptic for the purpose of the Special Acts :

(*e*) ascertaining what children are defective within the meaning of the Mental Deficiency Act, 1913, and notifying suitable cases to the Local Control Authority in accordance with the Mental Deficiency (Notification of Children) Regulations, 1914.

11. *Special Schools.*

Proposals for enabling the following classes of children to obtain suitable education in certified schools :—

(*a*) blind children, including partially blind ;
(*b*) deaf children, including partially deaf ;
(*c*) physically defective children, including delicate children for whom an open-air school is desirable ;
(*d*) mentally defective children ;
(*e*) epileptic children.

12. *Provision of Meals for Children attending Public Elementary Schools.*

Proposals for—

(*a*) accommodation and equipment and the service of meals ;
(*b*) making the provision available for children whose parents can defray the cost of meals ;
(*c*) dealing with special needs as occasion arises, *e.g.*, at times when there is exceptional unemployment ;
(*d*) associating the School Medical Service with the work of feeding school children.

13. *Organisation of Social and Physical Training in connection with Public Elementary Schools.*

(*a*) Proposed provision for—

(i.) organising physical training, including swimming and children's games ;
(ii.) vacation schools and classes (Section 13, Education (Administrative Provisions) Act, 1907) ;
(iii.) evening play centres (Section 13, Education (Administrative Provisions) Act, 1907) ;
(iv.) holiday and school camps (Section 17, Education Act, 1918) ;
(v.) playing fields and school swimming baths (Section 17, Education Act, 1918) ;
(vi.) other social and physical training (Section 17, Education Act, 1918).

(*b*) Proposed arrangements, if any, for utilising the assistance of Juvenile Welfare Organisations.

14. *Nursery Schools* (Section 19 (1), Education Act, 1918.)

Proposals for—

(*a*) supplying or aiding the supply:

(*b*) attending to the health, nourishment and physical welfare of the children.

II.—Co-ordination of Public Elementary Schools with Schools forming part of the System of Higher Education.

Arrangements for co-ordinating the work of the Elementary Schools with that of—

(i.) Continuation Schools;

(ii.) Secondary Schools;

(iii.) Junior Technical Schools;

(iv.) Other full-time Schools;

indicating in each of the cases (ii.), (iii.) and (iv) the normal age of transfer and the methods adopted for selecting the pupils.

III.—Secondary Schools.

1. *Proposed Organisation of Secondary Education in the Area, including the Provision to be made in Schools not provided by the Authority.*

(*a*) Statistical estimate of the supply of Secondary School accommodation required for the area, regard being had to the needs of children previously educated:—

(i.) in Public Elementary Schools;

(ii.) otherwise.

(*b*) Procedure for ascertaining local needs.

(*c*) Arrangements, if any, for preparatory departments.

(*d*) Types of Secondary Schools which will be included in the provision available for the area, and principles of differentiation in respect of aim, curriculum, length of course, provision for Advanced Courses or other advanced work.

(*e*) Proposals for co-ordination of schools of different types and arrangements as to transfer of individual scholars.

(*f*) Proposals for re-arrangement of supply by amalgamation of schools or otherwise.

(*g*) Proposals for co-operation with other Authorities as to the provision or maintenance of schools or otherwise.

(*h*) Proposals in order of urgency for additional provision of schools and hostels to be made by the Authority, or by other bodies with a view of establishing an adequate, appropriate and accessible supply of Secondary Schools for the area.

2. *Arrangements for Administering the Schools.*

(*a*) Methods of regulating admission with a vew to establishing a suitable entrance standard, facilitating classification, and securing an adequate duration of school life.

(*b*) Arrangements as to Governing Bodies of provided schools and their relations with the Authority.

(*c*) Arrangements for treating non-provided schools within or without the area as part of the local system, including the conditions and methods of aiding such schools.

(*d*) Scales of fees or other charges in respect of the pupils in the different types of school included in the local system.

3. *Aid to Pupils.* (See XI., page 654.)

4. *Teachers.*

Proposals as to the remuneration of teachers.

IV.—Continuation Schools.

1. *Continuation Schools on the Basis of Voluntary Attendance.*

(*a*) Proposals for establishing Continuation Schools of the type contemplated by the Education Act, 1918, on the basis of voluntary attendance during the day-time (whether by arrangement with employers or otherwise), in anticipation of the Appointed Day for compulsory attendance.

(*b*) Proposals for the continuance pending the Appointed Day of junior part-time courses in the evening, or in the day-time on lines different from those of the Continuation Schools contemplated by the Act.

(*c*) Proposals for providing during the seven years following the Appointed Day, day or evening part-time courses of various types suitable for students of 16 to 18 years of age. (*See also* V. 1 (*a*) (iii), page 649.)

2. *Proposed Organisation of the Statutory Continuation School System.*

(*a*) Approximate numbers of boys and girls to be admitted annually.

(*b*) Arrangements for formation of Advisory Committees containing employers and workpeople.

(*c*) Types of courses to be provided for boys and girls respectively and their local distribution: arrangements for selecting the school and the course of instruction to be attended by the pupils, and for giving effect to Section 10 (9) of the Education Act, 1918, methods of grading pupils in the courses of instruction taken by them.

(*d*) Hours of attendance to be required in the year and their distribution.

(*e*) Arrangements for physical training (Section 3 (1), Education Act, 1918).

(*f*) Policy as to size of schools and of classes for different subjects.

(*g*) Arrangements for co-operation between Authorities in respect of pupils resident in one area and employed in another.

(*h*) Arrangements for the local management of the schools and for the inclusion in Part III. areas of representatives of the Part III. Local Education Authority (Section 3 (3), Education Act, 1918).

(*i*) Arrangements for securing the co-operation of Universities in the provision of lectures and classes for pupils for whom instruction by such means is suitable (Section 3 (2), Education Act, 1918).

(*j*) Arrangements for encouraging voluntary evening attendance for further study, supervised homework, or recreative subjects, whether in the Continuation Schools or at institutions for Further Education.

(*k*) Arrangements for social and physical training (Section 17, Education Act, 1918). (*See also* VI., page 650.)

(*l*) Arrangements for securing regular attendance (Section 3 (2), Education Act, 1918) and for dealing with claims for exemption (Section 10 (2) and (3), Education Act, 1918).

3. *Proposals as to Accommodation and Equipment.*

Proposals, including any proposals of bodies or persons other than the Authority, for—

(i.) the use or adaptation of existing buildings or the provision of new buildings;

(ii.) the provision of apparatus or equipment of a special character.

4. *Teachers.*

(*a*) Proposed basis as to (i.) hours of teaching per week, and (ii.) number of weeks' employment in the year, on which Continuation School staffing is to be determined.

(*b*) Establishment of men and women teachers to be maintained (including organising teachers, if any) of various types and qualifications.

(*c*) Proposals as to the remuneration of teachers.

[N.B.—This Section should be thought of as covering the period between 14 and 18 years of age though in the first instance it will be carried out only as regards the first half of that period.]

V.—Further Education supplementary to that given in Elementary, Secondary and Continuation Schools.

1. *Proposed System of Further Education for the Area.*

(*a*) Provision to be made, whether by the Authority alone or in conjunction with other Authorities having powers under the Education Acts or by other bodies with a view to the establishment of a system of Further Education available to students in the area by means of—

(i.) Junior full-time courses of two or more years' duration, planned to give children leaving Public Elementary Schools preparation for particular occupations (including artistic occupations);

(ii.) Senior full-time courses in preparation for particular occupations (including artistic occupations) for pupils leaving Secondary Schools after reaching the standard represented by the First School Examination;

(iii.) Senior part-time courses planned for students who have left Secondary and Continuation Schools, or who are exempt from attendance at Continuation Schools distinguishing between—

(*a*) vocational courses;

(*b*) courses in liberal subjects, *e.g.*, literature, history, sociology, mathematics, pure science, music, art, &c.;

(*c*) courses in practical subjects, such as domestic subjects and handicrafts;

(*d*) courses in physical training;

(iv.) Courses for adult students, *e.g.*:—

(*a*) University Extension Lectures;

(*b*) tutorial classes under the supervision of a University or University College;

(*c*) other classes established by organisations interested in the promotion of liberal studies.

(*b*) Policy with regard to institutions, &c., not provided by the Authority which supply Further Education for students in the area.

(*c*) Arrangements for enabling qualified students to attend special or more advanced courses outside the area.

(*d*) Arrangements for

(i.) securing and developing the educational uses of museums and libraries;

(ii.) developing the educational activities of local Literary, Historical, Archæological, Scientific, Musical, Artistic and Dramatic Associations.

(*e*) Arrangements for enlisting the co-operation and interest of employers and workpeople in connection with courses related to the needs of particular occupations.

(*f*) Arrangements as to fees.

2. *The Position of each of the Principal Institutions in the Local System of Further Education.*

(*a*) The scope of the work of each Local College or School of Art, indicating in outline which of the types of work mentioned in 1 (*a*) above are provided for.

(*b*) The scope of the work of each Junior full-time school to be conducted outside the premises of Local Colleges or Schools of Art.

3. *Provision of Accommodation and Equipment.*

Proposals in order of urgency for providing suitable accommodation and equipment for the purposes of the local scheme of Further Education (including proposals of bodies other than the Authority), distinguishing between proposals concerning the premises of—

(i.) Local Colleges;
(ii.) Schools of Art;
(iii.) Junior full-time schools;
(iv.) Other centres of instruction.

4. *Proposals for Aid to Pupils and Students.* (*See* ***XI.***, page 654.)

5. *Teachers.*

Proposals as to the remuneration of teachers.

VI.—Social and Physical Training of Pupils and Students attending Educational Institutions other than Elementary Schools (Section 17, Education Act, 1918).

Arrangements for—

(i.) Holiday and school camps;
(ii.) the provision of physical training centres, playing fields, and swimming baths;
(iii.) developing corporate life by means of clubs, games, &c., and for enlisting the co-operation of Juvenile Welfare Organisations;
(iv.) other facilities for social and physical training in the day or evening.

VII.—Proposed Arrangements for the Medical Inspection and Treatment (Section 18, Education Act, 1918) of Children and Young Persons attending—

(*a*) Secondary Schools;
(*b*) Continuation Schools;
(*c*) Other educational institutions not being elementary schools.

(Compare Elementary Education, I. 8, 9, and 10, pages 644 and 645).

VIII.—Proposed Arrangements under the Choice of Employment Act, 1910, including Arrangements for the Co-operation of Part III. Local Education Authorities.

IX.—Supply, Education and Training of Teachers.

1. *Proposed Arrangements for the Recruitment and Preliminary Education and Training of intending Teachers.*

(*a*) Proposed annual recruitment by the Authority of boys and girls intending to be teachers, indicating the attention which has been given to such local needs as—

(i.) the maintenance of the existing number of adult teachers in the elementary schools;
(ii.) the requirements as to increase in number and improvements in quality of elementary school staffs arising through—
  (*a*) changes in the extent of the obligation to attend school full time;
  (*b*) proposals for the ultimate replacement of Supplementary or Uncertificated Teachers by teachers with higher qualifications;
  (*c*) the Authority's policy as to the size of classes;
(iii.) the requirements of Part III. areas within the county;
(iv.) the requirements of schools other than elementary schools;

and to the possibility of using the local resources for—

(v.) contributing to national as distinct from local requirements.

(*b*) The number of the intending teachers referred to in (*a*) who will obtain their preliminary education by the normal method of attending full time at a Secondary School from the age of 12 or earlier (i.) up to the age of 17 at least: or (ii.) up to the age of 16 at least, followed by pupil teachership for two years.

(*c*) The number of the intending teachers referred to in (*a*) who will obtain their preliminary education under arrangements supplementary to the normal methods, distinguishing between those—

(i.) transferred under special conditions from elementary schools to Secondary Schools at or about the age of 14;

(ii.) instructed in independent Pupil-Teacher Centres or in classes preparatory to such Centres;

(iii.) instructed in Pupil-Teacher Centres attached to central or other elementary schools;

(iv.) instructed under arrangements specially approved for the recognition of pupil-teachers in rural areas for three or four years.

(*d*) Provision of Bursarships or other allowances in connection with the arrangements for preliminary education.

(*e*) Arrangements for the preliminary practical training of intending teachers, including arrangements for co-operation with Part III. Local Education Authorities.

(*f*) Methods of making known to parents and others the prospects of the teaching profession and the local opportunities for entering it.

2. *Proposed Provision for Training of intending Teachers.*

(*a*) Arrangements for assisting persons intending to be teachers in Public Elementary Schools, Special Schools, or Secondary Schools to proceed to University Training Departments or to Training Colleges, distinguishing between—

(i.) Grants to students;

(ii.) Grants to institutions in consideration of reservation of places;

(iii.) Other methods of supplying or aiding the supply of facilities for training.

(*b*) Arrangements for providing or aiding the provision of training for intending teachers of—

(i.) Art;

(ii.) Domestic subjects;

(iii.) Handicraft;

(iv.) Physical exercises;

or for aiding students to obtain such training.

(*c*) Arrangements in contemplation as to the training of persons intending to teach in Continuation Schools—

(i.) Co-operation with Universities in respect of the training of graduates in full-time courses;

(ii.) Other provision for supplying or aiding the supply of training in full-time courses of at least one year's duration;

(iii.) Provision of short full-time or part-time courses in Technical Schools or elsewhere for—

(*a*) teachers in Secondary or Public Elementary Schools desirous of qualifying for work in Continuation Schools;
(*b*) teachers with Evening School experience;
(*c*) persons without teaching experience, but with a knowledge of industries, commerce, music, art, domestic subjects, gardening, physical exercises, &c.;

(iv.) Arrangements for enabling persons whose previous experience has been in teaching to make themselves acquainted with industrial or commercial conditions;

(v.) Allowances to enable students to attend—
(*a*) University Departments for the training of graduates;
(*b*) other full-time courses of at least one year's duration;
(*c*) short full-time courses;
(*d*) part-time courses.

(*d*) Arrangements in contemplation as to the training of persons intending to teach in Technical Schools.

(*e*) Arrangements in contemplation as to the training of persons intending to teach in Nursery Schools.

3. *Proposed Provision for Persons already engaged in Teaching.*

(*a*) Provision of short full-time or part-time courses specially planned for teachers.

(*b*) Facilities offered for the attendance of teachers at—
(i.) full-time courses at University Training Departments, Training Colleges or other central institutions;
(ii.) short full-time courses at home or abroad;
(iii.) local part-time courses.

(*c*) Facilities for enabling teachers to visit schools for observation.

[N.B.—Courses or facilities intended for Uncertificated Teachers or Supplementary Teachers would be distinguished from those intended for teachers already possessing Degrees, Certificates or Diplomas.]

X.—University Education.

1. *Proposals for aiding the supply of University Education.*

(*a*) by grants for general maintenance;
(*b*) by grants in respect of places reserved for students nominated by the Authority;
(*c*) by grants for erection of premises or for equipment.

2. *Aid to Students.* (*See* XI.)

XI.—Aid to Pupils and Students.

Provision, in addition to that made by College, School and Scholarship Foundations, for securing that children and young persons shall not be debarred from receiving the benefits of any form of education by which they are capable of profiting through inability to pay fees (Section 4 (4), Education Act, 1918), and otherwise for aiding pupils and students.

(N.B.—So far as possible the particulars given should distinguish awards carrying remission of fees only (whether described as free places, free studentships, scholarships or otherwise), and those carrying , in addition to remission of fees, aid towards maintenance, travelling, or boarding. Entrance, internal and leaving scholarships should also be distinguished. Information should be given as to the number, value, type of institution in which tenable and period of tenure ; the methods of award should be indicated, with any limitations as to age, sex, area, or as to income of parents. Attention should be directed to any specific provision for aiding Secondary School pupils transferred or removing from school to school within the area, or from a school in the area to a school outside the area, or *vice versâ*. Any provision for enabling pupils or students to obtain training of special types at non-local institutions (*e.g.* institutions for sea-training) should also be mentioned.

Aid given in special connection with the Supply, Education and Training of Teachers will be more conveniently dealt with under the appropriate heads of IX.]

XII.—Aid for Research (Section 23, Education Act, 1918).

Proposals for exercising the power of the Authority to aid teachers and students to carry out investigations for the advancement of learning or research, and to aid educational institutions with that object.

[Similar memoranda, with the necessary modifications, have been issued by the Board of Education with reference to the powers and duties of councils of county boroughs (Schedule B) for schemes under Section 1, of the Act of 1918, and Local Education Authorities for the purposes of Part III. of the Education Act, 1902, in regard to schemes under Section 2 of the Act of 1918 (Schedule C.)]

Circular to Local Education Authorities. (*Circular* 1130. *10th September*, 1919.)

BOARD OF EDUCATION.

Local Education Finance. Annual Estimates.

1. The provisions of Section 44 of the Education Act, 1918, with regard to grants to Local Education Authorities, and also the new system of paying a consolidated grant based partly upon expenditure, render it advisable for the Board to draw the attention of Local Education Authorities to the intimate relationship which now exists between Local Finance and the Imperial Exchequer.

2. To comply with the procedure by which money for Public Services is voted by Parliament, the Board have to submit annually to the Treasury an approximate Estimate in December, and a full detailed Estimate by 1st January, of the sums required for the service of Education in the ensuing financial year. When these Estimates have been adopted by the Government, and laid before Parliament, no alterations of the amounts shown therein can be made by the Board.

3. The sums provided in the Board's Estimates for grants for Elementary Education and for Education other than Elementary depend chiefly upon returns of expenditure, either estimated or actual, supplied by Local Education Authorities, and it is only by accurate figures being supplied in these returns, and by the returns being sent to the Board in time to serve the purpose for which they are intended, that full provision for the sums required for grants can be made in the Estimates placed before Parliament.

4. . . .

5. In future years the Board propose to issue Forms 886 F. and 986 F. at the end of March, and it is hoped that all Authorities will be able to return them, in the first instance, not later than 15th May. An opportunity to revise the figures will be given in the autumn of each year.

Circular to Local Education Authorities. (*Circular* 1136. *28th November*, 1919.)

BOARD OF EDUCATION.

Arrangements under Section 3 (1) (d) of the Ministry of Health Act, 1919.

1. I am directed by the Board of Education to inform you that on the 25th November, 1919, an Order in Council was made, under Section 11 of the Ministry of Health Act, 1919, fixing the 1st December, 1919, as the appointed day for Section 3 (1) (*d*) of that Act. The terms of this Section are as follows :—

There shall be transferred to the Minister all the powers and duties of the Board of Education with respect to the medical inspection and treatment of children and young persons under paragraph (*b*) of Sub-section (1) of Section 13 of the Education (Administrative Provisions) Act, 1907, as amended and extended by the Education Act, 1918. Provided that, for the purpose of facilitating the effective exercise and performance of these powers and duties, the Minister may make arrangements with the Board of Education respecting the submission and approval of Schemes of Local Education Authorities and the payment of grants to Local Education Authorities, so far as such Schemes and payment relate to or are in respect of medical inspection and treatment ; and the powers and duties of the Minister may under any such arrangements be exercised and performed by the Board on his behalf and with his authority under such conditions as he may think fit.

2. The Minister of Health has decided to exercise his discretion under this Section to make arrangements with the Board of Education respecting the submission and approval of Schemes of Local Education Authorities and the payment of grants to Local Education Authorities, so far as such Schemes and payments are related to or are in respect of medical inspection and treatment. Under these arrangements—

(i.) The Minister will retain the ultimate right to determine—

(*a*) what is necessary in regard to the work of medical inspection and medical treatment ; and

(*b*) the standards to be adopted from time to time in regard to the character, adequacy and efficiency of the provision made.

Under this arrangement effective control both of the work which is done and of the way in which it is done will be in the hands of the Minister.

(ii.) Subject thereto, the Board of Education will be responsible for receiving and approving, on behalf of the Ministry of Health, all Schemes of Local Education Authorities and for the payment of grants in aid of medical inspection and treatment, and will exercise in this regard the powers and duties of the Minister of Health.

3. Under these arrangements all communications relating to medical inspection and treatment should be addressed as heretofore to the Board of Education, whose officers will continue to carry on the work of inspection.

4. Arrangements have also been made to secure continuous and effective co-operation and co-ordination between the two Departments, not only in respect of medical inspection and treatment (under Section 13 (1) (*b*) of the Education (Administrative Provisions) Act, 1907, as amended and extended by the Education Act of 1918) but also in respect of the other functions of the Board of Education and Local Education Authorities which directly and intimately concern the health of children and young persons. The two Departments are actuated by the desire that there shall be a comprehensive, consistent and progressive policy for promoting the health and physical welfare of children and young persons and that this policy shall be reflected in the administration of the Departments so as to facilitate to the utmost extent the development of health services by Local Authorities whether under the Education Acts, the Public Health Acts, the Maternity and Child Welfare Act, or otherwise.

GEORGE NEWMAN.

Circular to Local Education Authorities. (*Circular* 1140. *18th December*, 1919.)

BOARD OF EDUCATION.

Publication of Schemes under the Education Act, 1918.

1. Section 4 (2) of the Education Act, 1918, provides that :—

> " Before submitting schemes under this Act a Local Education Authority shall consider any representations made to them by parents or other persons or bodies of persons interested, and shall adopt such measures to ascertain their views as they consider desirable, and the authority shall take such steps to give publicity to their proposals as they consider suitable, or as the Board of Education may require."

2. Local Education Authorities may find it convenient to have from the Board some indication of their views as to the measures that should be taken for giving effect to this section. By what methods, and at what stage or stages in the preparation of the Scheme, local opinion can best be consulted are questions which the Board propose within certain limits to leave to each Local Education Authority to determine for itself. As a general rule, Authorities will probably think it desirable to invite discussion on the main features of their Scheme, whether by means of public meetings or by conference with minor Authorities and other Bodies or persons specially interested, at a comparatively early stage while their proposals are still to some extent fluid and tentative. Public criticism is likely to be more helpful and less difficult to meet at this stage than it will be when the Scheme is more fully elaborated. Some Authorities, however, may see good reason for deferring publicity until they are in a position to submit their Scheme for discussion as a whole in the form, or almost in the form, in which they propose to lay it before the Board.

3. Whichever of these methods may be adopted, it is desirable that the submission of the Scheme to the Board should be preceded by some period of formal publication during which notices of the Scheme will be advertised in the Press and copies will be made available for public inspection or purchase. Where the Board are satisfied that effective publicity has been secured in the earlier stages, they will usually accept one month as a sufficient period of formal

publication. In other cases the period should be not less than three months.

4. The advertisements should appear in at least two issues in successive weeks of each of two local papers. They need not attempt even an outline of the Scheme, but should indicate its scope, showing whether it deals with the whole or only some part of the educational provision of the area. They should also state the facilities offered for inspection and purchase and the time allowed for the submission of representations.

5. Full copies of the Scheme should be deposited for inspection at the Authority's offices and other convenient places such as public libraries, and copies should also be obtainable on application at a reasonable price. In addition, copies should be sent to the Local Education Authorities of all contiguous areas and in the case of Counties and Boroughs or Urban Districts inside Counties there should be reciprocal communication of Schemes.

6. The Board recognise that in some respects it may be necessary to anticipate the submission and approval of a Scheme, by specific proposals for the extension of the educational system—*e.g.*, the purchase of sites and preparation of plans and acceptance of tenders for erection of buildings. It is obviously undesirable that all action in these directions should be suspended pending the approval of a complete Scheme. On the other hand, it is most desirable that in considering those proposals the Board should be assured that they are not controversial and will not prejudice the construction of a satisfactory Scheme or commit them or the Local Education Authority to an unbalanced plan of development, to which exception can reasonably be taken. The Board therefore hope that Local Education Authorities before submitting such proposals will give adequate publicity to them by means of meetings, conferences, &c., or by the publication of a preliminary memorandum showing the relation of the proposals to the general policy on which the Scheme will be based. It is desirable that, when the proposals are submitted, the Board should be furnished with a summary of the criticisms, favourable and unfavourable, which have been made on them.

L. A. SELBY-BIGGE.

Circular to Local Education Authorities. (*Circular* 1143. 31*st December*, 1919.)

BOARD OF EDUCATION.

Public Elementary Schools in England.

Official Correspondence.

1. Before the war the Board had devolved upon His Majesty's Inspectors of Schools action which could best be taken by them locally in direct communication with the Local Education Authorities, *e.g.* :

The recognition of Supplementary Teachers under Schedule I D of the Code ;

The approval of minor alterations of premises, under Article 17 (*c*) of the present Code ;

The approval of educational visits, under Article 44 (*b*) of the present Code.

During the war this practice was extended, especially in the matter of the staffing of individual schools, of the military occupation of school premises, and of the employment of unrecognised teachers.

The Schemes to be made by Local Education Authorities under the Education Act of 1918, in which the work in the area as a whole will be dealt with, and the introduction into the new Code of Articles 27 (1) (*a*) and (*b*), make it necessary to extend the principle further.

2.—(i.) The Board propose to delegate to H.M. Inspectors ordinary communications with Authorities upon the staffing of individual schools and upon minor questions of school premises. They intend that remarks upon these subjects should not in future be included in the Inspector's official report to the Board except in so far as defects of premises or of staffing are materially affecting the efficiency of the instruction in the school.

(ii.) For example, whilst the Board would continue to correspond with the Authority on all matters relating to proposals for new schools and substantial alterations to premises, it would be left to H.M.I. to bring to the notice of the Authority and Managers, either by letter or by interview, such minor improvements as he may judge to be needed in the schools in his district. Upon this subject he would only report to the Board upon individual schools in case of great urgency, *e.g.*, seriously inadequate heating, in which

action by the Board might be required. For this purpose he would keep copies of such of his letters, and notes of such of his interviews with representatives or officers of the Authority, as by arrangement with them were to be regarded as official.

(iii.) In dealing with the equipment of schools the same procedure would be followed. H.M.I. would no longer notify the Board, through the medium of a school-report, of the inadequate supply of such requirements as desks and stationery, but would in the first instance communicate direct with the Authority.

(iv.) With regard to the provision of school accommodation, it would be for the Inspector to call the Board's attention to any cases in which he had represented that action should be taken to remedy a deficiency and in which he was not satisfied with the progress made.

3. Similarly, official correspondence with the Office of the Board upon school staffing would be limited as a rule to questions of the Authority's policy with regard to the area as a whole or to schools of particular grades, sorts or sizes. But, if the Inspector had reason to think that his representations upon questions of detail were ineffectual, it would be open to him to furnish the Board with copies of his correspondence in order that the Board might take up the matter as a question of principle.

4. What has been said above applies as well to the Woman Inspectors who deal with the staffing and the premises provided for instruction in Domestic Subjects.

5. The procedure here indicated will, it is thought, enable official correspondence between the Board's Office and the Authority upon matters of detail to be considerably reduced. It has been the practice in many areas for close communication to exist between H.M.I. and the Authority upon such matters, and the Board's present proposal is only to adopt generally what is aleady the practice in many places.

6. H.M. Inspector will of course be consulted by the Board, and they hope by the Authority, upon the "Scheme" for the area. He will also have to certify annually to the satisfaction of the conditions of the Code. All official correspondence arising out of these occasions will be conducted from the Office of the Board.

L. A. SELBY-BIGGE.

SERVICE WHICH HAS BEEN DECLARED BY THE TREASURY TO BE QUALIFYING SERVICE FOR THE PURPOSES OF THE SCHOOL TEACHERS (SUPERANNUATION) ACT, 1918.

A. Teaching Service.

(1) *Service prior to the 1st April, 1919.*

(i.) Service in any of the Schools represented on the Head Masters' Conference or the Incorporated Association of Head Masters or the Association of Head Mistresses or the Conference of Catholic Colleges or the Association of Preparatory Schools.

(ii.) Service in Schools recognised under the Board of Education Act, 1899, for the purposes of Column B. of the Teachers' Register.

(iii.) Any service which is accepted by the Teachers' Registration Council set up under Section 16 of the Education (Administrative Provisions) Act, 1907, as teaching experience which qualifies a teacher for registration. Under this head the Service of a teacher during any period of the School's existence covered by the service of another teacher which is taken into account by the Teachers' Registration Council towards the five years' teaching experience which qualifies him for registration will be regarded as qualifying service.

(iv.) Service in a School even although under private management and conducted for private profit as to which the Board are satisfied that it was conducted on the same standards of efficiency and with the same general principles as schools which were under public management.

The same regard will be paid to continuity as in the case of recognised service (see Section 15 (vi.) of the 1918 Act), and a School which, at any given date, is found to be satisfactory from the point of view of qualifying service will be assumed, in default of evidence to the contrary, to have been previously satisfactory, so that previous service in that School shall be treated as qualifying.

(2) *Service after the 1st April, 1919.*

Service in any School or educational institution with regard to which the Board are satisfied, either by a certificate from an Inspector of the Board or of a Local Education Authority or University, that it is making satisfactory provision for the education of the scholars.

(3) *Service either before or after the 1st April, 1919.*

(i.) Service in any University or University College.

(ii.) Service in any school receiving grants from or provided by a Government Department other than the Board of Education.

(iii.) Service as a Supplementary Teacher in a Public Elementary School.

(iv.) Service as a teacher in any educational institution in receipt of grants from the Government in any other part of the United Kingdom.

(v.) Service as a teacher in any School or other educational institution in any British Colony or Dependency or in India which is maintained, aided or under regular inspection by the Government.

(vi.) Service in any foreign country undertaken under the arrangement for the interchange of teachers which was made by the Board of Education some years ago.

B. Non-teaching service.

Service after 1st April, 1919.

The service of Domestic Economy Teachers who have been lent to the Navy and Army Canteen Board during the War as from the 1st April, 1919.

Service either before or after 1st April. 1919.

(1) Service as Inspector of Schools or in a similar capacity under any Government Department in England, Scotland or Ireland. This would include, besides the Board's Inspectors, Home Office Inspectors of Reformatory and Industrial Schools, Inspectors of Poor Law Schools and Army and Admiralty Schools.

(2) Service as an official of the Board of Education or the Scotch or Irish Education Departments.

(3) Service as an official of a Local Education Authority whose salary is paid out of the Education rate. This would cover officials of an Education Committee but not municipal or county officials generally.

(4) An official of any school or educational institution (not conducted for private profit) including a University if the institution is one, teaching service in which would be regarded as recognised or qualifying service.

(5) In the case of Trade or Commercial Instructors in Technical Schools a certain number of years of industrial or commercial experince may be treated as qualifying service—the normal period to be not more than five years with power to allow not more than seven years in special cases.

THE END.

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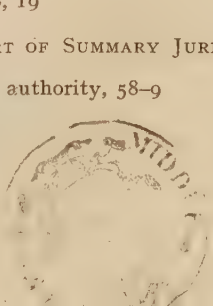

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